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ASSESSORS' MANUAL

A DIGESTED TREATISE AND
COMPENDIUM OF THE LAW

ON

ASSESSORS, ASSESSMENTS AND TAX LAW.

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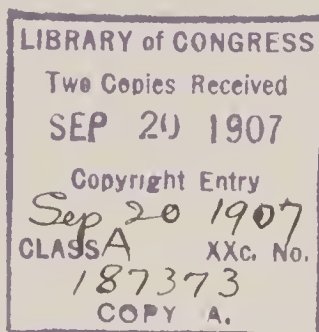
FULL AND COMPLETE ANNOTATIONS, NECESSARY
FORMS AND A REFERENCE TABLE OF
LAWS AND STATUTES.

BY

GEORGE D. REED AND ERWIN E. SHUTT
OF THE BAR OF ROCHESTER, MONROE COUNTY, N. Y.

1907

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PREFACE.

The purpose of this work is to present in a clear, concise and logical form all the laws pertaining to the duties of assessors and taxation of property.

The laws and statutes as here presented are as they exist at this date, including all amendments made by the legislature during its last session (1906). It has been deemed advisable in practically all cases to give the law or statute verbatim as taken from the official records rather than for the authors to state it in their own words. The work will be found to have full annotations which appear under the sections to which they refer.

It is impossible in a work, within the compass with which this must be, to give a digest of all the decisions which may be found bearing upon the subjects treated throughout its sections, and instead of making any attempt so to do there has been selected such cases as broadly discuss the general principles or bring out particularly the important points under consideration.

This volume will be found to contain practically all forms that are in use, and these follow the sections to which they refer. This will be found more convenient than to have all forms appear at the end of the book.

Realizing the difficulty that always exists with one seeking to find the law, special effort has been made to provide a full and complete index and to so cross-reference every topic that the subject sought for may be easily and readily found.

In treating the several subjects herein discussed it has been found necessary in some cases to either reprint or practically duplicate certain sections of some of the laws or to state their substance or set forth the part thereof applicable to the subject being treated. In such cases there will be found cross-references to the part of the work where the law may be found in full. To supplement these cross-references and cover any omission of cross-references that may exist, and to enable the reader to at any time readily find the particular law, statute or section that he may desire, there will be found on the first pages of this volume a

table of all the laws and statutes herein appearing, giving the section in this work where such law, statute or section may be found. It is believed that this feature will be of great convenience.

Throughout the preparation of this work very valuable assistance has been rendered by Mr. Charles Porter Downs, who for many years was an official of the Town of Brighton, N. Y., and as such had a wide, practical experience in town and county affairs. His services and experience have been of inestimable value.

Perfection is not attainable in a work of this character but there has been made, however, a conscientious endeavor to present a treatise as free from error as may be, and it is hoped that this work will be of service to many and will receive such approbation as it may justly merit.

REED & SHUTT.

March, 1907.

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CHAPTER ONE.

THE ASSESSOR.

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| § 1. Election of assessor. | §12. Hearing of complaints — grievance day. |
| § 2. Vacancies in office of assessor. | §13. Application to reduce assessment. |
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| §10. Preparation of assessment roll. | |
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§ 1. **Election of assessors.**—There shall be elected at the biennial town meeting in each town, by ballot, * * * three assessors.

Term of office.—Assessors, * * * when elected, shall hold their respective offices for two years.

But whenever there is or shall be a change in the time of holding town meetings in any town, persons elected to such offices at the next biennial town meeting after such change shall take effect, shall enter upon the discharge of their duties at the expiration of the term of their predecessors and serve until the next biennial town meeting thereafter or until their successors are elected and have qualified.

Whenever the time of holding town meetings in any town, is changed to the first Tuesday after the first Monday in November, except when changed as provided in section forty-three of this chapter, the town officers elected thereat shall take office on the first day of January succeeding their election.

Town Law, § 13, as am'd by Laws 1897, chap. 481; Laws 1898, chap. 363; Laws 1899, chap. 145, and Laws 1901, chap. 391.

In cities the number and method of electing assessors is governed by the charter. In villages the board of trustees or a committee of their number act as assessors, unless separate assessors are appointed or elected as provided by the village law.

Village Law, § 51, chap. 195, Laws of 1898.

Vacancies in office of assessor, oath of office.

NOTICE OF APPOINTMENT OR ELECTION.

To Mr.....:

Please to take notice that at of the of you were to the office of of the of N. Y.

Dated, 19....

Yours truly,

.....
..... Clerk.

§ 2. **Vacancies in office of assessors in towns.**—The office of assessor becomes vacant upon his death, or resignation, or removal from office, or ceasing to be a resident of the town, or conviction of a felony or crime involving a violation of his oath of office, or judgment of a court declaring his office vacant or his refusal or neglect to file his oath within fifteen days after the commencement of his term of office.

Public Officers Law, § 20; 2 R. S. 2502-2503.

Such vacancy may be filled by special election or appointment by town board.

Public Officers Law, § 26.

Assessors may be removed by Supreme Court for cause.

Public Officers Law, § 25a. }

APPOINTMENT OF TOWN OFFICER TO FILL VACANCY.

STATE OF NEW YORK,

COUNTY OF..... } ss.:
TOWN OF..... }

We, the undersigned, constituting the town board of the town of, N. Y., hereby appoint, of said town, to fill the vacancy caused by the of;; which term will expire at the next annual town meeting, or so soon thereafter as his successor shall have qualified as required by law.

Witness our hands and seals this day of, 19....

....., L. S.
Supervisor.
(Other signatures follow.)

§ 3. **Oath of office.**—Before entering upon the discharge of his duties and within ten days after notification of his election or appointment an assessor must take and file the constitutional oath of office.

Town Law, § 51.

And failure to do so forfeits his claim to the office.

See Public Officers Law, § 20.

Who eligible, jurisdiction of assessors, oaths, jury lists.

§ 4. **Who is eligible.**—Every elector of the town shall be eligible to the office of assessor.

Town Law, § 50; 3 R. S. 3214.

§ 5. **Jurisdiction and liability of assessors.**—Assessors are subordinate officers having no authority except such as is conferred on them by statute, and must act within the authority given them. When their right to act depends upon the existence of a fact, that fact must exist or their acts are void.

They have no power to determine what property is taxable; that belongs to the legislature. And for an erroneous decision on their part as to what is taxable property or who is a taxable inhabitant they are liable and an assessment founded thereon is void. Their jurisdiction generally speaking is confined to the taxable property located, and the taxable person residing within their tax district on July first of each year.

National Bank etc. v. Elmira, 53 N. Y. 49; M. L. I. Co. v. Mayor, 144 N. Y. 494; Miller v. City Amsterdam, 149 N. Y. 288; Etna Life Ins. Co. v. Mayor etc., 153 N. Y. 335.

Assessors are quasi judicial officers *and when they have jurisdiction* are not liable to private actions.

Western R. Co. v. Nolan, 48 N. Y. 513; Vail v. Owen, 19 Barb. 22.

Although an assessment may be erroneous it is not illegal if *made with jurisdiction of person and property*.

Williams v. Weaver, 75 N. Y. 30.

And may not be attacked collaterally.

U. S. T. Co. v. Mayor, 144 N. Y. 488.

Assessment of property that is exempt is void and assessors liable.

Lapolt v. Mallby, 10 Misc. 360; Williams v. Supr., 78 N. Y. 561.

An assessment to the estate of a deceased person is void.

Cromwell v. McLean, 123 N. Y. 474.

An erroneous decision by the assessors as to residence is not such a judicial act as will validate the assessment or protect the assessors from personal liability therefor.

The question of such residence is a jurisdictional one and always open to inquiry when the authority to make an assessment is assailed.

Wilcox v. City of Rochester, 129 N. Y. 247; City of N. Y. v. McLean, 170 N. Y. 374.

§ 6. **May administer oaths.**—An assessor may administer any necessary oath in any matter or proceeding lawfully before him, or to any paper to be filed with him as such officer.

Town Law, § 56; 3 R. S. 3215.

§ 7. **Jury lists.**—Assessors must meet with supervisor and town clerk the first Monday of July every third year beginning 1878 to make a jury list for jurors to serve for three years.

Code Civ. Pro., § 1035.

Preparation of assessment roll.

§ 8. **Tax district defined.**—A “tax district” means a political subdivision of the State having a board of assessors authorized to assess property therein, for State and county taxes.

Tax Law, § 2, subd. 1; 3 R. S. 3090.

§ 9. **Ascertaining facts for assessment.**—The assessors in each tax district may, by mutual agreement, divide it into convenient assessment districts not exceeding the number of such assessors. The assessors in each tax district shall annually between May first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein, except that in towns containing an incorporated village having a population of more than ten thousand inhabitants according to the last State census the assessors may have from April fifteenth until July first to ascertain the taxable property and names of persons taxable in such town, and except that in towns containing an incorporated city having a population of more than ten thousand inhabitants according to the last state census where said city so situated shall have its own separate board of assessors, the town assessors may have from May first to July first to ascertain the taxable property and names of persons taxable in such towns.

Tax Law, § 20, as am'd Laws 1905, chap. 61.

Although this division into districts may be made for convenience, yet one assessor cannot make the assessment or valuation; it is the joint act of all, or at least a majority of the assessors. All that is done by the assessors in taking down the names and entering descriptions and amounts in their respective districts, previous to the 1st of July, is merely obtaining the information preliminary to the assessment to be made when all the assessors meet in July and examine and correct and alter such memoranda when they make out the assessment-roll.

People ex rel. Mygatt v. Supervisors, 11 N. Y. 571, 572; People ex rel. D. & H. C. Co. v. Parker, 117 N. Y. 86.

In collecting material for making an assessment the assessors may avail themselves of such information by inquiry and otherwise as they can obtain. They are not limited to what is known as legal evidence. They are to form their own judgment from the best information in their power, derived from their own knowledge and experience and from such communications as they may confide in.

People ex rel. B. & S. I. L. R. R. v. Barker, 48 N. Y. 70-76; People ex rel. M. F. I. Co. v. Comrs., 76 id. 64, 75, 76; People ex rel. O. P. & P. Co. v. People, 63 St. Rep. 133, 134; 81 Hun, 383; People ex rel. Donlon v. Board, 74 Hun, 83; Mayor v. Davenport, 92 N. Y. 604, 612, 613; People ex rel. Mayor v. McCarthy, 102 id. 640-642; People v. Barker, 144 N. Y. 94.

§ 10. **Preparation of assessment roll.**—The assessors shall prepare an assessment roll containing six separate columns and shall, according to the best information in their power, set down:

Preparation of assessment roll.

1. In the first column the names of all the taxable persons in the tax district.

Tax Law, § 21, subd. 1.

Omission of headings does not invalidate.

Litchfield v. Brooklyn, 13 Misc. 693.

Persons includes corporations and corporations are therefore entitled to a deduction for debts.

People v. Dederick, 161 N. Y. 195.

It is necessary to the validity of every assessment that the statute under the authority of which it is made should be complied with in every substantial particular.

Sanders v. Downs, 141 N. Y. 422; Cromwell v. MacLean, 123 id. 474.

In order that the levy of a tax on resident lands may be valid and enforceable, it must be assessed to the proper party by name.

Stewart v. Crysler, 100 N. Y. 378; Hilton v. Fonda, 86 id. 340; Whitney v. Thomas, 23 id. 281.

The lands must be assessed to the owner or the occupant, or as nonresident. They can not be assessed as to "Est. of A. B.," "Heirs of A. B.," "A. B. and others, legal heirs of C. D.," "A. B. or C. D.," "A. B. or occupant."

Cromwell v. McLean, 123 N. Y. 280;; Trowbridge v. Horan, 78 N. Y. 439; Haytt v. Mayor, 99 N. Y. 280; Village Sandy Hill v. Akins, 77 Hun, 537.

Assessments are void if made against one who is neither owner nor occupant.

Parker v. Parsons, 80 Hun, 281; Hagauer v. Hall, 10 App. Div. 581.

An assessment of personal property of a lunatic entered in the annual record under the initial of the lunatic's name is sufficient to show that the assessors intended to assess the lunatic, and such assessment is not invalidated by the addition of the name of the committee and his place of business, as such additions are mere surplusage.

People ex rel. U. S. T. Co. v. Barker, 50 St. Rep. 741; affd., 137 N. Y. 631.

2. In the second column the quantity of real property taxable to each person with a statement thereof in such form as the commissioners of taxes shall prescribe.

Tax Law, § 21, subd. 2.

3. In the third column the full value of such real property.

Id., subd. 3.

In fixing the amount of full value the assessors act upon their own judgment as to the actual value. The law furnishes, except in few instances, no system for ascertaining values; and within the requirement that property must be assessed at its full value and that all assessments must be equal and uniform, leaves the matter of values to the judgment of the assessors.

Mayor v. Davenport, 92 N. Y. 604-613; In re Hermance, 71 id. 481-488.

Notice of completion of roll.

The judgment of the assessors as to values, upon conflicting evidence, is not reviewable in the Court of Appeals.

People ex rel. R., W. & O. R. R. v. Haupt, 104 N. Y. 377.

4. In the fourth column the full value of all the taxable personal property owned by each person respectively after deducting the just debts owing by him.

Id., subd. 4.

5. In the fifth column the value of taxable rents reserved and chargeable upon lands within the tax district, estimated at a principal sum, the interest of which, at the legal rate per annum, shall produce a sum equal to such annual rents and if payable in any other thing except money the value of the rents in money to be ascertained by them and the value of each rent assessed separately, and if the name of the person entitled to receive the rent assessed cannot be ascertained by the assessors, it shall be assessed against the tenant in possession of the real property upon which the rents are chargeable.

Id., subd. 5.

6. In the sixth column the value of the special franchise as fixed by the state board of tax commissioners.

Id., subd. 6.

7. Such assessment roll shall contain two additional columns in one of which shall be inserted the amount of the tax levied against each person named therein, and in the other the date of the payment of such tax.

Tax Law, § 21, subd. 7, added by Laws 1901, chap. 159.

§ 11. **Notice of completion of assessment roll.**—The assessors shall complete the assessment roll on or before the first day of August, and make out a copy thereof, to be left with one of their number, and forthwith cause a notice to be conspicuously posted in three or more public places in the tax district, stating that they have completed the assessment roll, and that a copy thereof has been left with one of their number at a specified place, where it may be seen and examined by any person until the third Tuesday of August next following, and that on that day they will meet at a time and place specified in the notice to review their assessments. Upon application by a nonresident owner of real estate, having real estate in more than one tax district, the assessors may fix a time subsequent to the third Tuesday in August, but not

Notice of completion of roll.

later than the thirty-first day of August, for a hearing and to review their assessment. In any city the notice shall conform to the requirements of the law regulating the time, place and manner of revising assessments in such city. During the time specified in the notice the assessor with whom the roll is left shall submit to the inspection of every person applying for that purpose.

Tax Law, § 35, as am'd by Laws of 1904, chap. 385.

NOTICE OF COMPLETION OF ASSESSMENT-ROLL.

(Tax Law, § 35.)

Notice is hereby given that the assessors of the town of (or, of ward of the city of), have completed their assessment-roll for the current year; that a copy thereof has been left with the undersigned, A. B., at his office (or, as the case may be), in (if in a city, specify the street number), where it may be seen and examined by any person interested therein until the third Tuesday of August next, and that on such day, at o'clock in thenoon, said assessors will meet at, in the said town (or ward), to hear and examine all complaints in relation to such assessments, on the application of any person conceiving himself aggrieved thereby.

Dated this day of, 19..

A. B.,
C. D.,
E. F.,
Assessors.

There is no provision requiring the roll as originally completed for the review to be made out in single volume or of sheets attached together or which forbids that it should be made out in parts or upon detached sheets which, when brought together constitute the roll complete for purpose of review, nor is there any thing to forbid the engrossment of the roll after correction on review day.

"There is a time, no doubt, when the roll must be in one—a single volume or collection of sheets united together, and that is when the roll is finally completed, after all corrections are made and when the verification is attached thereto."

It is undoubtedly the intention of the statute that the roll first completed for revision should be the same in every particular as to its contents as the roll finally completed for verification, except for the changes made on review.

The statute contemplates that the roll shall be twice completed, once for revision and once for verification, and the substantial requirement in respect to the identity of these two rolls is that they shall in all respects be the same as to their contents with exception of changes made on review.

People v. Campbell, 64 Hun, 418.

After the completion of the roll and formal notice thereof given, the assessors have no jurisdiction to change either the persons or property assessed or the adjudged valuations except upon the complaint of the party aggrieved.

People ex rel. Chamberlain v. Forest, 96 N. Y. 544.

What the property owner finds in the roll left with one of the assessors as above prescribed, he has a right to rely on, as the determination of the assessors to be the amount for which he is to be assessed and taxed for that year.

If mistake is discovered after such completion and before August 1 the notice may be countermanded, the roll corrected and completed, and a new notice given on or before August 1st.

Overing v. Foote, 65 N. Y. 263.

Hearing of complaints.

“Inasmuch as the statute provides that the assessors ‘shall cause notices thereof to be put up in three or more public places,’ etc., we think the posting of the notices by the person, other than an assessor, answers the requirements of the statute.”

Board of Supervisors v. Betts, 25 St. Rep. 660.

Failure of assessors to meet on the third Tuesday of August or a verification of the roll before the third Tuesday of August, or defect in date, are irregularities and not jurisdictional defects so as to avoid the assessment.

People v. Turner, 145 N. Y. 451. See also Joslyn v. Rockwell, 128 N. Y. 338; Ostrander v. Darling, 127 N. Y. 70; Cromwell v. McLean, 123 N. Y. 474; Ensign v. Barse, 107 N. Y. 329.

§ 12. **Hearing of complaints.**—The assessors shall meet at the time and place specified in such notice, and hear and determine all complaints in relation to such assessments brought before them, and for that purpose they may adjourn from time to time. Such complainants shall file with the assessors a statement, under oath, specifying the respect in which the assessment complained of is incorrect, which verification must be made by the person assessed, or whose property is assessed, or by some person authorized to make such statement, and who has knowledge of the facts stated therein. The assessors may administer oaths, take testimony and hear proofs in regard to any such complaint, and the assessment to which it relates. If not satisfied that such assessment is erroneous, they may require the person assessed, or his agent or representative, or any other person, to appear before them and be examined concerning such complaint, and to produce any papers relating to such assessment with respect to his property or his residence for the purpose of taxation. If any such person, or his agent or representative, shall willfully neglect or refuse to attend and be so examined, or to answer any material question put to him, such person shall not be entitled to any reduction of his assessments. Minutes of the examination of every person examined by the assessors upon the hearing of any such complaint shall be taken and filed in the office of the town or city clerk. The assessors shall after said examination, fix the value of the property of the complainant and for that purpose may increase or diminish the assessment thereof.

Tax Law, § 36; 3 R. S. 3102.

AFFIDAVIT ON APPLICATION TO CORRECT ASSESSMENT.

(Tax Law, § 36.)

STATE OF NEW YORK, }
COUNTY OF } ss.:

A. B., being duly sworn, says that he is assessed on the assessment-roll of the town of, for the year 19.., for dollars;

Hearing of complaints.

that such assessment is incorrect and excessive for the reason that just debts owing by him have not been deducted; that the amount of such debts is dollars, and that there is not included in such amount any debts contracted or incurred in the purchase of non-taxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser, or otherwise, nor for the purpose of evading taxation (or state specifically the respect in which the assessment complained of is incorrect).

A. B.

Subscribed and sworn to before me, }
 this day of, 19.. }
 C. B.,
Notary Public.

Complaints not made before the assessors on grievance day should be deemed waived.

Matter of Wingard, 78 Hun, 58; Hilton v. Fondu, 86 N. Y. 340.

The same rule applies to a claim made for exemption by reason of property having been purchased wholly or in part with pension moneys.

In re Baumgarten, 39 A. D. 174; Broderick v. City of Y., 22 A. D. 448; McKibbin v. Oneida Co., 25 A. D. 361; Tucker v. City of W., 35 A. D. 173.

Failure to object on grievance day is a fatal objection to proceedings to review.

People v. Comr., 99 N. Y. 254; People v. Adams Co., 125 N. Y. 471.

The same rule is applicable to corporations.

See, In re Adler Bros. Co., 76 A. D. 571.

This rule does not apply however to non-taxable persons or property.

Mygatt v. Washburn, 15 N. Y. 319; Clark v. Norton, 49 N. Y. 247; Westfall v. Preston, 49 N. Y. 354; Bowe v. McNab, 11 A. D. 386.

It is no excuse for not appearing that the person taxed was unofficially informed, that his assessment would not be changed for the year before.

People v. Adams, 125 N. Y. 471; People v. Dolan, 126 N. Y. 166.

When proofs offered upon any complaint are uncontradicted and creditable the assessors should be governed thereby.

People v. Comr., 141 N. Y. 251, 139 N. Y. 55; People v. Feitner, 78 A. D. 315; People v. Feitner, 82 A. D. 373.

When there is a conflict in the evidence then the assessors must determine according to their best judgment.

People v. Davenport, 91 N. Y. 574; People v. Astern, 100 N. Y. 597; People v. McCarthy, 102 N. Y. 630; People v. Barker, 144 N. Y. 94; People v. Comr., 104 N. Y. 240 and 377; People v. Dederick, 161 N. Y. 203. See also, 179 U. S. 279.

The usual method of proving value is not by examining the consideration named in deeds or by private sale of the lands, but by the testimony of witnesses on oath.

People v. McCarthy, 102 N. Y. 630.

If one applies for reduction on his personal property upon the ground that he was indebted to an amount more than equal to the value of all the personal property owned by him, and upon being examined under oath in respect to the amount he was owing, and the persons to whom he was indebted, stated that he could not remember whom he owed, the assessors were right in refusing to reduce the assessment under the evidence.

Application to reduce assessment.

One who fails to subscribe a written examination has no right to have the deduction claimed by him made, even though his examination shows him clearly entitled to it.

Where the complainant asks to have the assessment stricken from the roll, the assessors may reduce the valuation.

People v. Assessors, 40 N. Y. 154.

§ 13. Application to reduce assessment.

To the Assessors of the Town of

I hereby apply to you on behalf of to reduce the valuation of (my, his or its) real estate, or to reduce the valuation of (my, his, or its) personal estate as set down in the assessment-roll for the present year.

Dated,, 19..

.....

EXAMINATION BY THE ASSESSORS.

Q. What is your name and residence?

A.

Q. What reduction do you ask in the valuation of said real estate?

A.

Q. On what grounds do you ask it?

A.

Q. When did you acquire it?

A.

Q. How (by purchase, inheritance, etc.)?

A.

Q. If by purchase, when did you buy it?

A.

Q. What did you pay for it?

A.

Q. What improvements have been made upon it, and at what outlay?

A.

(Add any further questions the assessors may see fit to ask.)

Q. On what grounds do you ask for a reduction of the assessment on said personal property?

A.

Q. What is the nature of said personal estate (notes, mortgages, bank deposits, accounts, chattels, etc.)?

A.

Q. How much have you invested in each?

A.

Q. How much have you on deposit in savings banks?

A.

Q. How much have you invested in securities or properties in other states, and which securities are in your possession or in the possession of other persons residing in this state?

A.

Q. How much of your personal estate is invested in United States securities or other nontaxable property?

A.

Q. How much in each?

A.

Q. What does your indebtedness consist of?

A.

Q. Has any of your indebtedness been contracted or incurred in the purchase of nontaxable property or securities?

A.

Application to reduce assessment.

Q. If it has, how much?

A.

Q. Is any portion of it for or on account of any indirect liability as surety, guarantor or indorser?

A.

Q. If so, how much?

A.

Q. Is any portion of it for or on account of any debt or liability contracted or incurred for the purpose of evading taxation?

A.

Q. How much money, received from pension or bounty money, have you invested in your personal property, or real estate?

A.

Q. What is the net value of your personal estate after deducting your total indebtedness and exempt property?

A.

(Add any further questions that the assessors may think necessary.)

Dated,, 190..

.....
Applicant.

STATE OF NEW YORK, }
County of, } ss.:

I,, do solemnly swear that the answers to questions put to me by the assessors of the town of, N. Y., touching the value of my real estate, the amount and value of my personal property liable to assessment by them, are true. And that the amount of debts owing by me and to be deducted from the amount of my personal assessment, is \$....., and that there is not included in such amount any debt contracted for or incurred in the purchase of nontaxable property or security owned by me or held for my benefit, nor for or on account of any indirect liability as surety, guarantor, indorser or otherwise, nor for the purpose of evading taxation.

.....

Subscribed and sworn to before me, this

.... day of, 190..

Unless there is a complaint made as to an assessment, the assessors do not seem to have power to increase the same; nor to add the names of persons omitted from the roll.

The requirements as to this statement seem to be mandatory

People v. Supervisors, 15 Barb. 607; Adriance v. Supervisors, 12 How. 224; People v. Ross, 15 id. 63; People ex rel. W. S. R. R. v. Adams, 125 N. Y. 471; 99 id. 254, supra; 126 id. 166, supra; but see In re Corwin, 135 id. 245.

STATEMENT FORM.

STATE OF NEW YORK, }
County of Monroe. } ss.:

John Doe, being duly sworn, says, that he resides in the town (or city) of, and that he is assessed on the assessment-roll of said town (or city) for the year 190.., upon real estate owned by him therein for the sum of dollars; that such assessment is incorrect in the following respects:

First. That deponent is a pensioner of the United States and expended in the purchase of said real estate the sum of dollars out of his pension moneys, no part of which has been deducted from his said assessment.

Second. That (designating the particulars in which the assessment is incorrect) and so on.

Wherefore, deponent asks that his said assessment be corrected in the particulars mentioned.

Application to reduce assessment.

Dated,, N. Y., July .., 190..
 Sworn to before me, this }
 day of, 190.. } JOHN DOE.

 Notary Public,, N. Y.

STATEMENT OF PERSONAL PROPERTY.

Owned or possessed by
 Residing at N. Y.
 For the taxable year 190..

Do you own any mortgages upon real estate? If you do, state the aggregate amount unpaid thereon.

What was the aggregate amount of debts which were owing to you on May 1st, 190.., including checks payable on that day and notes and drafts due at that date?

What is the value of such debts?

Had you on May 1st, 190.., any money at interest? If you had, state the amount thereof.

Of what amount of cash on hand were you possessed on May 1st, 190.., not including checks payable on that day and drafts and notes due at that date and money at interest or debts due you?

Has the amount of cash on hand or property owned by you on said date been offset or lessened in any of the answers to the foregoing questions because money was, or is, owed by you, or by reason of liabilities of any kind against you?

What was the total amount of indebtedness against you on May 1st, 190..?

On the first day of May, 190.., were you trustee or guardian for any person or persons? If so, do you as such trustee or guardian at that date have in your possession or control any personal estate? If so, state the name of the person or persons for whom you were on that date trustee or guardian, with the amount of personal estate owned by each.

On May 1st, 190.., did you hold personal property as an executor or an administrator? If so, state the name of each estate and the amount of personal property owned by each estate.

Did you on May 1st, 190.., severally or jointly with others, hold personal property in trust for any person or persons who are residents of the town of? If so, state the name of each of such persons with the amount of personal property so held for each.

On May 1st, 190.., was there any personal property heretofore enumerated held in trust or otherwise for you?

Did you on May 1st, 190.., own individually or as trustee or otherwise, personal property without the State of New York? If so, what was the value thereof?

Have you within one year prior to May 1st, 190.., transferred or agreed to sell or transfer to any person, any personal property up to that time owned by you, for the purpose of evading, or in some manner avoiding the payment of a tax upon such property, with the understanding, express or implied, or with the expectation on your part, that the same should be re-transferred, re-delivered, or re-sold to you after May 1st, 190..?

Have you contracted any liability by giving your note or otherwise, without a full consideration therefor for the purpose of avoiding taxation?

STATE OF NEW YORK,)
 COUNTY OF MONROE,) ss.:
 TOWN OF.....)

I, of the town of aforesaid, do hereby solemnly swear that the foregoing statement subscribed by me, contains a full, true, and correct description of all the taxable personal property owned or controlled by me, and that I am unconditionally bound to pay the amount

Penalty for false statement, correction of tax roll.

of indebtedness set down therein as owing by me, and that my answers to the foregoing interrogatories are correct and true without mental reservation or qualification, and that I have not conveyed or disposed of any property or estate in any manner, or created any fictitious debt for the purpose of evading provisions of law, or for the purpose of affecting the value and amount of my taxable estate, so help me God.

Subscribed and sworn to before me,

this day of, 190..

.....

.....

§ 14. **Penalty for making false statement.**—A person, who, in making any statement, oral or written, which is required or authorized by law to be made as the basis of imposing any tax or assessment, or of an application to reduce any tax or assessment, willfully makes, as to any material matter, any statement which he knows to be false, is guilty of a misdemeanor.

Penal Code, § 485.

§ 15. **Correction and verification of tax-roll.**—When the assessors or a majority of them shall have completed their roll, they shall severally appear before any officer of their county authorized by law to administer oaths and shall severally make and subscribe before such officer an oath in the following form: “We, the undersigned, do severally depose and swear that we have set down in the foregoing assessment roll all the real estate situated in the tax district in which we are assessors, according to our best information; and that, with the exception of those cases in which the value of the said real estate has been changed by reason of proof produced before us, and with the exception of those cases in which the value of any special franchise has been fixed by the state board of tax commissioners, we have estimated the value of the said real estate at the sums which a majority of the assessors have decided to be the full value thereof; and, also, that the said assessment roll contains a true statement of the aggregate amount of the taxable personal estate of each and every person named in such roll over and above the amount of debts due from such persons, respectively, and excluding such stocks as are otherwise taxable, and such other property as is exempt by law from taxation, at the full value thereof, according to our best judgment and belief,” which oath shall be written or printed on said roll, signed by the assessors and certified by the officer.

Tax Law, § 37, as am'd by chap. 712, Laws of 1899.

Filing of roll and notice thereof.

Until the oath is made and roll certified to as required the assessors have not "completed" it nor discharged their full duty thereto and the oath and certificate must substantially comply with the statute.

People v. Duffern, 68 N. Y. 321; Colman v. Shattuck, 62 N. Y. 348.

A defective oath may be amended.

People v. Haupt, 104 N. Y. 377; People v. Jones, 106 N. Y. 330. See also, Nat. Bank v. Elmira, 53 N. Y. 49; Brevoort v. City of Brooklyn, 89 N. Y. 128; Hinckey v. Cooper, 22 Hun, 253.

When in the oath the word "hereof" was used instead of "of proof" in the clause "by reason of proof produced before us," the assessment was declared void.

Shattuck v. Bascom, 105 N. Y. 39.

§ 16. **Filing of roll and notice thereof.**—In cities the assessment roll when thus completed and verified shall be filed on or before September first, in the office of the city clerk, there to remain for fifteen days for public inspection. The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the city, that such assessment roll has been finally completed and stating that it has been so filed and will be open to public inspection. At the expiration of such fifteen days, the city clerk shall deliver such roll to a supervisor of the tax district embraced therein. In towns, when the assessment roll shall have been thus completed and verified, the assessors shall make two copies thereof, one of which shall be retained by them for the use of themselves and their successors in office, and the other of which, duly certified by the said assessors to be a copy of said assessment roll, shall, on or before the fifteenth day of September, be filed in the office of the town clerk, and which shall thereupon become a public record. The assessors shall forthwith cause a notice to be posted conspicuously in at least three public places in the tax district and to be published in one or more newspapers, if any, published in the town, that such assessment roll has been finally completed and stating that such certified copy has been so filed. The said original assessment roll shall on or before the first day of October be delivered to a supervisor of the tax district embraced therein. Notwithstanding the provisions of this section, the board of supervisors of any county may determine the number of copies of the town assessment rolls of the towns of such county to be made, by whom such copies shall be made, the date when the certified copy of the town assessment roll shall be filed in the

Neglect by assessors.

office of the town clerk, and the date when the original assessment roll shall be delivered to the supervisor of the town.

Tax Law, § 38, as am'd by Laws of 1904, chap. 279.

NOTICE OF FILING COMPLETED ASSESSMENT-ROLL WITH CLERK.

(Tax Law, § 38.)

Notice is hereby given that the assessment-roll (or assessment-rolls), for the town (or city) of, in the county of for the year 19.., has been finally completed by the undersigned assessors, and a certified copy thereof was filed in the office of the town (or city) clerk, at the of, where the same will remain open to public inspection for fifteen days.

Dated this day of, 19..

A. B.,
C. D.,
E. F.,

Assessors of the town of

After the rolls are delivered for filing they can not be changed in any manner, except amended oath.

People v. Jones, 106 N. Y. 330; *R. W. & O. v. Smith*, 39 Hun, 332; *affd.*, 101 N. Y. 684; *People v. Barker*, 150 N. Y. 52-56; *In re Babcock*, 115 N. Y. 450; *Clark v. Norton*, 49 N. Y. 243.

If the notice is not given as above required the time for a person aggrieved to apply for a review of said assessment under § 251 of Tax Law, is unlimited.

In re Corwin, 135 N. Y. 245; *People v. Haupt*, 104 N. Y. 377.

§ 17. **Neglect or omission of duty by assessors.**—The assessors, in the execution of their duties, shall use the forms and follow the instructions transmitted to them, from time to time, by the commissioners of taxes. If any assessor shall neglect or omit to perform any duty, the other assessors shall perform such duty and shall certify upon the assessment-roll the name of the delinquent assessor, stating therein the cause of such omission, and the assessment-roll, when otherwise made and completed in accordance with the requirements of this article, shall be deemed to be the assessment-roll of all the assessors. If the assessors shall neglect to meet for the purpose of hearing grievances any person aggrieved by the assessment may appeal to the board of supervisors at its next meeting, which shall have the same power to review and correct such assessment as the assessors have under this article. If any assessor shall refuse or neglect to perform any duty or do any act required of him by this article, he shall forfeit to the county the sum of fifty dollars, to be recovered by the district attorney.

Tax Law, § 40; 3 R. S. 3103.

Fees.

CERTIFICATE OF NEGLECT OR OMISSION OF DUTY OF ONE OF THE ASSESSORS.
(Tax Law, § 40.)

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

We, A. B., and C. D., two of the assessors of the town of,
in the county of, do hereby certify to the board of supervisors
of such county, in pursuance of section 40 of the Tax Law, that E. F., the
other assessor of such town, has neglected (or omitted) to verify the fore-
going assessment-roll, or (state other omission), the cause of such neglect
(or omission) being (state the same).

Dated this day of, 19...

A. B.
C. D.

§ 18. Fees, assessor's fees.—

For each day's actual and necessary service performed
by, for town \$2 00

Or at the option of the town board, a salary not exceeding
\$1,000 per annum, when the assessed valuation of real estate ex-
ceeds \$20,000,000.

Except that in Monroe and Nassau counties assessors are en-
titled to \$3 per day, and in Nassau county the town boards may
fix an annual salary not exceeding \$1,200.

Town charge.

Town Law, § 178, subd. 1, as am'd by Laws 1900, chap. 292; Laws 1902,
chap. 320; Laws 1903, chap. 492; Laws, 1904, chap. 124, 312; Laws
1906, chap. 62.

CHAPTER TWO.

TAXABLE PROPERTY.

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|---|---|
| §19. Taxable persons, personal property. | §35. Householders' exemptions. |
| §20. When property of nonresident is taxable. | §36. Building and loan associations exemptions. |
| §21. When exempt. | §37. Real estate mortgages exemption and taxation of. |
| §22. Personal property exempted. | §38. Cemeteries. |
| §23. Personal property defined. | §39. Soldiers monument associations. |
| §24. Taxable persons — residence. | §40. Insurance companies, etc. |
| §25. Deduction for debts, etc. | §41. United States securities. |
| §26. Assessment of real estate. | §42. Historical societies. |
| §27. Assessment of special franchises. | §43. Hospital corporations. |
| §28. Certiorari to review assessment. | §44. Plank roads and turnpikes. |
| §29. Deduction from special franchises. | §45. Fraternal organizations. |
| §30. Special franchise tax not to affect other tax. | §46. Firemen, etc. |
| §31. Taxation and exemption of colleges of pharmacy. | §47. Ascertaining facts for assessment. |
| §32. Place of taxation of real property. | §48. State lands in forest preserve. |
| §33. Taxation of real property divided by line of tax district. | §49. Nonresidents, etc. |
| §34. Property exempt from taxation. | §50. Abandonment of lot divisions. |
| | §51. Survey and maps. |
| | §52. Agent, trustee, guardian, etc. |
| | §53. Omitted property. |
| | §54. Debts owing nonresidents. |
| | §55. Assessments against estates. |

§ 19. **Taxable persons—Personal property—Place of Taxation of property of residence.**—Every person shall be taxed in the tax district where he resides when the assessment for taxation is made, for all personal property owned by him, or under his control as agent, trustee, guardian, executor or administrator. Where taxable personal property is in the possession or under the control of two or more agents, trustees, guardians, executors or administrators residing in different tax districts, each shall be taxed for an equal portion of the value of such property so held by them. Rents reserved in any lease in fee or for one or more lives or for a term more than twenty-one years and chargeable upon real property within the State, shall be taxable to the person entitled to receive the same, as personal property in the tax district where such real property is situated, and for the purpose of the taxation thereof such person is to be deemed a resident of such tax district.

Tax Law, § 8; 3 R. S. 3094.

As to what constitutes "Residence," see § 1236.

As to what constitutes "Personal Property," see § 1235.

As to debts to be deducted, see § 1237.

When property taxed, exempt; defined.

§ 20. **When property of nonresidents is taxable.**—Subdivision 1. Nonresidents of the state doing business in the state, either as principals or partners, shall be taxed on the capital invested in such business, as personal property, at the place where such business is carried on, to the same extent as if they were residents of the state.

Subdivision 2. The personal property of nonresidents of the state having an actual situs in the state, and not forming a part of capital invested in business in the state, shall be assessed in the name of the owner thereof for the purpose of identification and taxed in the tax district where such property is situated, unless exempt by law. This subdivision shall not apply to money, or negotiable collateral securities, deposited by, or debts owing to, such nonresidents nor shall it be construed as in any manner modifying or changing the law imposing a tax on real estate mortgage securities.

Tax Law, § 7, as am'd by Laws 1906, chap. 248.

§ 21. **When exempt.**—"A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this State, sent to or deposited in this State for collection; the products of another State, owned by a nonresident of this State and consigned to his agent in this State for sale on commission for the benefit of the owner; moneys of a nonresident of this State, under the control or in the possession of his agent in this State, when transmitted to such agent for the purpose of investment or otherwise" are exempt from taxation.

Tax Law, § 4, subd. 13; 3 R. S. 3093.

§ 22. **Personal property exempted from taxation.**—All real property situate within the state and all personal property owned or situate within the state is taxable unless exempt by law.

Tax Law, § 3; 3 R. S. 3091.

§ 23. **Personal property defined.**—The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this State, however secured or wherever such securities shall be held; debts due by inhabitants of this State to persons not residing within the United States for the purchase of

Residence of taxable persons, deduction, real estate.

any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate.

Tax Law, § 2, subd. 5, as numbered by Laws 1901, chap. 490.

§ 24. **Taxable persons—residence.**—Residence of a taxpayer for taxation purposes is presumed to continue to be where previously shown until change is made to appear affirmatively.

See § 19, ante.

Matter of Nichols, 54 N. Y. 62; People v. Crowley, 21 A. D. 304; Poddock v. Lewis, 59 A. D. 430.

A mere declaration by taxpayer of a change of residence is not of itself sufficient to change his residence.

People v. Streeber, 103 N. Y. 652.

If a person has two residences the place where his family lives where he stays the greater part of his time where he casts his vote is the place for taxation of his personal estate.

People v. Barker, 17 N. Y. Supp. 788; People v. Crowley, 21 A. D. 304; Bowe v. Jenkins, 69 Hun, 458; People v. Moore, 52 Hun, 13; Bell v. Pierce, 51 N. Y. 12.

§ 25. **Deduction for debts, except those fraudulently contracted etc.**—The just debts owing by persons and corporations are to be deducted from the assessed value of their personal property, or if the debts exceed the value of the personalty no assessment can be levied on account of the personalty.

Tax Law, § 21, subd. 4; 3 R. S. 3097.

People v. Barker, 87 Hun, 194; People v. Dedrich, 161 N. Y. 195.

No deduction shall be allowed in the assessment of personal property by reason of the indebtedness of the owner contracted, or incurred, in the purchase of non-taxable property or securities owned by him or held for his benefit, nor for or on account of any indirect liability as surety, guarantor, indorser or otherwise, nor for or on account of any debt or liability contracted or incurred for the purpose of evading taxation.

Tax Law, § 6; 3 R. S. 3093.

§ 26. **Assessment of real estate.**—All real property within this State * * * is taxable unless exempt from taxation by law.

Tax Law, § 3; 3 R. S. 3091.

Definition of real estate.—The terms “land,” “real estate,” and “real property,” as used in this chapter, include the land itself above and under water, all buildings and other articles and

Definition of real estate.

structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage, or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, underground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways, or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the state. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax.

Tax Law, § 2, subd. 3, as am'd by chap. 712, Laws of 1899.

The term special franchise shall not be deemed to include the crossing of a street, highway or public place where such crossing is not at the intersection of another street or highway, unless such crossing shall be at other than right angles for a distance

Assessment of special franchises.

of not less than two hundred and fifty feet, in which case the whole of such crossing shall be deemed a special franchise. This subdivision shall not apply to any elevated railroad.

Tax Law, § 2, subd. 4, as added by Laws 1901, chap. 490.

Buildings and other articles erected upon or affixed to land are real estate for taxation, although they may be owned by one other than the owner of the land.

People v. Power of Taxes, 80 N. Y. 573.

All trees, underwood growing on land, all mines, minerals, quarries, are real estate for taxation.

People v. Comrs., 104 N. Y. 240.

Elevated railway foundations, columns and superstructures are taxable as real estate.

People v. Tax Comr., 82 N. Y. 459.

Machinery standing on brick or wooden foundations, fastened with bolts, screws or shafting, forming part of a manufacturing plant owned by a manufacturing company, are taxable as real estate.

People ex rel. National Storage Co. v. Waldon, 26 A. D. 527.

Gas mains and underground conduits and horse railways are assessable as real estate.

People v. Barker, 81 Hun. 22; People v. Cassidy, 46 N. Y. 46; Herkimer Co. L. & P. Co. v. Johnson, 37 A. D. 257.

Lease for 999 years is real estate.

Elmira v. Dunn, 22 Barb. 402.

Railroad tracks, tunnels, ties, rails, sub-structures, superstructures, stations, etc., etc., are assessable as real estate.

People v. Clapp, 152 N. Y. 490; People v. Comr., 80 N. Y. 573; People v. Comr., 101 N. Y. 322.

Switches and conduits connecting street, feed mains of an electric light company, with premises of its customers, not assessable as real estate.

People v. Feinbrier, 99 A. D. 274, affd. 181 N. Y. 549.

When one persons owns the land as well as the buildings and the fixtures, machinery, structures, etc., standing upon it, then all should be included in one assessment. If, however, one persons owns the land and another the fixtures on them the land should be assessed to the owner of it and the fixtures etc., assessed to the owner as realty.

Matter of A. & B. T. Rd., 94 A. D. 509.

The franchise right, authority or permission mentioned in sub-division 3, of section 2, above, means some special privilege derived of some governmental body or political body having a right to grant the privileges sought to be taxed. A pipe line laid in highway, the fee of which is owned by abutting owners with the consent of abutting owners, but without a grant of state or other public body, is not a special franchise subject to tax under above subdivision 3.

People v. Relsof M. Co., 75 A. D. 131.

§ 27. **Assessment of special franchises.**—The state board of tax commissioners shall annually fix and determine the valuation

Assessment of special franchises.

of each special franchise subject to assessment in each city, town, or tax district. After the time fixed for hearing complaints the tax commissioners shall finally determine the valuation of the special franchises, and shall file with the clerk of the city or town in which said special franchise is assessed a written statement duly certified by the secretary of the board of the valuation of each special franchise assessed therein as finally fixed and determined by said board; such statement of valuation shall be filed with the town clerk of the respective towns within thirty days next preceding the first day of July in each year; and with the clerks of cities of the state within thirty days before the date set opposite the name of each city in the following schedule. In the city of New York such statement shall be filed with the department of taxes and assessments.

SCHEDULE OF DATES FOR FILING OF ASSESSMENTS OF SPECIAL FRANCHISES.

Name of city.	Date.	Name of city.	Date.
Rochester	April 1st.	Little Falls.....	July 1st.
Jamestown	April 1st.	Watervliet	July 1st.
Ithaca	April 1st.	Niagara Falls.....	July 1st.
Gloversville	April 1st.	Kingston	July 1st.
Auburn	May 1st.	Newburgh	July 1st.
New York city.....	April 1st.	Hudson	July 1st.
Schenectady	June 1st.	Amsterdam	July 1st.
Corning	June 1st.	Binghamton	July 1st.
Hornell	June 1st.	Geneva	July 1st.
Oswego	June 1st.	Middletown	July 1st.
North Tonawanda.....	July 1st.	Johnstown	July 1st.
Olean	July 1st.	Fulton	July 1st.
Syracuse	July 1st.	Plattsburg	July 1st.
Cohoes	July 1st.	Tonawanda	July 1st.
Ogdensburg	July 1st.	Buffalo	Dec. 1st.
Dunkirk	July 1st.	Yonkers	Oct. 1st.
Troy	July 1st.	New Rochelle.....	Oct. 1st.
Rome	July 1st.	Albany	Oct. 1st.
Watertown	July 1st.	Mount Vernon.....	Oct. 1st.
Elmira	July 1st.	Rensselaer	July 1st.
Lockport	July 1st.	Oneida	July 1st.
Utica	July 1st.	Cortland	July 1st.
Poughkeepsie	July 1st.		

Each city or town clerk shall, within five days after the receipt by him of the statement of assessment of a special franchise by the state board, deliver a copy of such statement certified by him to the assessors or other officers charged with the duty of making local assessments in each tax district in said city or town and to the assessors of villages and commissioners of highways within their respective towns and villages. The valuations of every spe-

Assessment of special franchises.

cial franchise as so fixed by the state board shall be entered by the assessors or other officers in the proper column of the assessment roll before the final revision and certification of such roll by them, and become part thereof with the same force and effect as if such assessment had been originally made by such assessor or other officer. If a special franchise assessed in a town is wholly within a village, the valuation fixed by the state board for the town shall also be the valuation for the village. If a part only of such special franchise is in a village, or is in a village situated in more than one tax district, it shall be the duty of the village assessors to ascertain and determine what portion of the valuation of such franchise, as the same has been fixed by the state board, shall be placed upon the tax roll for village purposes. The valuation apportioned to the town shall be the assessed valuation for highway purposes, and in case part of such special franchise shall be assessed in a village and part thereof in a town outside a village, the commissioners of highways of the town and village shall meet on the third Tuesday in August in each year and apportion the valuation of such special franchises between such town outside the village and such village for highway purposes. In case of disagreement between them the decision of the supervisor of the town shall be final. The town assessors shall make an apportionment among school districts at the time and in the manner required by section thirty-nine of this chapter. The valuation so fixed by the state board shall be the assessed valuation on which all taxes based on such special franchise in the city, town or village for state, municipal, school or highway purposes shall be levied during the next ensuing year. It shall not be necessary for the state board of tax commissioners to give notice to any person, copartnership, association or corporation of the valuation of a special franchise located in any village for village purposes except in a case where such valuation is required to be made for such village purposes by the state board of tax commissioners. The assessors or other taxing officer, or other local officer in any city, town or village, or any state or county officer, shall on demand furnish to the state board of tax commissioners any information required by such board for the purpose of determining the value of the special franchise.

Tax Law, § 42, added by Laws 1899, chap. 712, as am'd by Laws 1900, chap. 254; Laws 1902, chap. 112; am'd, chap. 382, Laws 1904.

This act shall not relate to the assessment of special franchises in the city of Buffalo made or to be made by the state board of

Review of assessment.

tax commissioners in the year nineteen hundred and four for the purpose of raising the annual taxes of said city of Buffalo for the fiscal year beginning July first, nineteen hundred and four.

Laws of New York 1904, chap. 382.

The franchise herein referred to shall be assessed as real estate. That is to say not subject to be diminished for charges thereon. The allowance of such charges is made only by deducting therefrom the tax.

Heerwagen v. Cons. St. Ry. Co., 179 N. Y. 99.

§ 28. **Certiorari to review assessment.**—An assessment of a special franchise by the state board of tax commissioners may be reviewed in the manner prescribed by article eleven of this chapter, and that article applies so far as practicable to such an assessment, in the same manner and with the same force and effect as if the assessment had been made by local assessors; a petition for a writ of certiorari to review the assessment must be presented within fifteen days after the completion and filing of the assessment roll, and the first posting or publication of the notice thereof as required by law. Such writ must run to and be answered by said state board of tax commissioners, and no writ of certiorari to review any assessment of a special franchise shall run to any other board or officer unless otherwise directed by the court or judge granting the writ. An adjudication made in the proceeding instituted by such writ of certiorari shall be binding upon the local assessors and any ministerial officer who performs any duty in the collection of said assessment in the same manner as though said local assessors or officers had been parties to the proceeding. The state board of tax commissioners on filing with the city, town or village clerk a statement of the valuation of a special franchise, shall give to the person, copartnership, association or corporation affected written notice that such statement has been filed, and such notice may be served on a copartnership, association or corporation by mailing a copy thereof to it at its principal office or place of business, and on a person either personally or by mailing it to him at his place of business or last known place of residence.

Tax Law, § 45, added by chap. 712, Laws of 1899, as am'd by chap. 254, Laws of 1900.

In any proceeding for the review of an assessment of a special franchise made by the state board of tax commissioners, said state board of tax commissioners is authorized to appear by coun-

Deduction of special tax.

sel to be designated by the attorney-general. The compensation of such counsel and the necessary and proper expenses and disbursements, including the expense of procuring the evidence of experts, incurred or made by him in the defense of such proceeding, and upon any appeals therein, shall when audited and allowed as are other charges against such tax district, be a charge upon the tax district upon whose rolls appears the assessment sought to be reviewed. Where, in one proceeding, there is reviewed the assessment of a special franchise in more than one tax district, separate accounts shall be rendered for said costs, expenses and disbursements to the proper officer of each of said tax districts and audited and allowed by him as aforesaid. For the purposes of this section, the city of New York shall be deemed one tax district.

Tax Law, § 45a, added by Laws 1906, chap. 155.

§ 29. Deduction from special franchise tax for local purposes.

—If, when tax assessed upon any special franchise is due and payable under the provisions of law applicable to the city, town or village in which the tangible property is located, it shall appear that the person, co-partnership, association or corporation affected has paid to such city, town or village for its exclusive use within the next preceding year, under any agreement therefor, or under any statute requiring the same, any sum based upon a percentage of gross earnings, or any other income, or any license fee, or any sum of money on account of such special franchise, granted to or possessed by such person, co-partnership, association or corporation, which payment was in the nature of a tax, all amounts so paid for the exclusive use of such city, town or village except money paid or expended for paving or repairing of pavement of any street, highway or public place, shall be deducted from any tax based on the assessment made by the state board of tax commissioners for city, town or village purposes, but not otherwise; and the remainder shall be the tax on such special franchise payable for city, town or village purposes. The chamberlain or treasurer of a city, the treasurer of a village, the supervisor of a town, or other officer to whom any sum is paid for which a person, co-partnership, association, or corporation is entitled to credit as provided in this section, shall, not less than five nor more than twenty days before a tax on a special franchise is payable, make and deliver to the collector or receiver of taxes or other officer au-

Special franchise tax, colleges of pharmacy.

thorized to receive taxes for such city, town or village, his certificate showing the several amounts which have been paid during the year ending on the day of the date of the certificate. On the receipt of such certificate the collector, receiver or other officer shall immediately credit on the tax roll to the person, co-partnership, or corporation affected the amount stated in such certificate, or any tax levied against such person, copartnership, association or corporation on an assessment of a special franchise for city, town or village purposes only, but no credit shall be given on account of such payment or certificate in any other year, nor for a greater sum than the amount of the special franchise tax for city, town or village purposes, for the current year; and he shall collect and receive the balance, if any, of such tax as required by law.

Tax Law, § 46.

A payment by a street surface railway company to a municipality under an agreement, whereby a percentage of the gross receipts previously payable should be reduced in consideration of granting transfers, etc., is under § 46 this section in the nature of a tax and the amount should be deducted from the special franchise tax.

Heerwagen v. Cross Town Street Ry. Co., 179 N. Y. 99.

§ 30. **Special franchise tax not to affect other tax.**—The imposition or payment of a special franchise tax as provided in this chapter shall not relieve any association, copartnership or corporation from the payment of any organization tax or franchise tax or any other tax otherwise imposed by article nine of this chapter, or by any other provision of law; but tangible property subject to a special franchise tax situated in, upon, under or above any street, highway, public place or public waters, as described in subdivision three of section two shall not be taxable except upon the assessment made as herein provided by the state board of tax commissioners.

Tax Law, § 47.

§ 31. **Taxation and exemption of colleges of pharmacy.**—Property real from which no rent is derived and personal property, situated within any city of the first class and belonging to any incorporated pharmaceutical society of any county which is either wholly or partly within such city, which society has heretofore been or may hereafter be authorized and empowered by act of the legislature to establish and which has established or may hereafter establish, a college of pharmacy in such

Place of taxation.

city; provided that such property is used for the purposes of such college and not otherwise, and provided also that the exemption of such property for any society in the counties of Kings and New York shall not exceed one hundred thousand dollars and in any other county affected hereby, shall not exceed fifty thousand dollars.

Tax Law, § 19, added by Laws 1905, chap. 446.

§ 32. **Place of taxation of real property.**—When real property is owned by a resident of a tax district in which it is situated, it shall be assessed to him. When real property is owned by a resident outside the tax district where it is situated, and is occupied, and the occupant is a resident of the tax district, it shall be assessed to either the owner or occupant. If the occupant resides out of the tax district or if the land is unoccupied, it shall be assessed as non-resident, as hereinafter provided by article two. In all cases the assessment shall be deemed as against the real property itself, and the property itself shall be holden and liable to sale for any tax levied upon it.

Tax Law, § 9, as am'd by Laws 1902, chap. 171.

When lots are assessed as resident lands to a person who is neither owner or occupant the assessment is void.

Stewart v. Crysler, 100 N. Y. 378; Sanders v. Downs, 141 N. Y. 422.

See also 117 N. Y. 77, 128 N. Y. 334.

To constitute occupancy there must be an intention on the part of the alleged occupant to enjoy the property.

An accidental or chance occupation of a small part of the land is not such an occupancy.

Smith v. Sanger, 4 N. Y. 577.

Nor the erection of fishing hut or hunting lodge to be used only occasionally for fishing or hunting this statute contemplates actual residence dwelling upon the land it may be by only a squatter without claim of title, but still the establishment of a household.

People v. Campbell, 143 N. Y. 335.

Where one had erected a loghouse upon the land, had fenced and cleared about an acre of it, lived in the house and occupied the land as his home, cultivated the ground annually, raised crops upon parts of it, cut hay from it, held, to be an occupant.

People ex rel. Chase v. Wemple, 144 N. Y. 478.

The mere fact that a person entered upon land and cut grass upon a natural meadow contained in a wild, uncultivated and unimproved forest tract, and upon two occasions scattered a little grass seed, at times dammed up a brook so as to overflow half an acre, is not an occupant.

People v. Turner, 145 N. Y. 451.

An assessment to an occupant in possession is an assessment of the property as a whole, without reference to the particular estates or interests own-

Taxation of real property.

ing the fee. The land being charged with the taxes, all claims and pretensions must yield to such charge and all persons interested must take notice.

O'Donnell v. McIntyre, 118 N. Y. 156-162.

§ 33. **Taxation of real property divided by line of tax district.**—If a farm or lot is divided by a line between two or more tax districts it shall be assessed in the tax district in which the dwelling house or other principal buildings are located, in the manner provided by section nine of this chapter, the same as though such farm or lot was wholly in such tax district, except that if the land is unoccupied or has not buildings thereupon, the portion of such farm, lot or tract of land lying in each district shall be separately assessed therein. If such land is situated in two or more counties and is wild and uncultivated and not occupied and used for agricultural purposes, the portions of such land lying in each county shall be separately assessed therein. If the boundary line of a tax district passes through a building, any portion of which is used as a dwelling, the owner of such building, if occupying the same or residing in either tax district, and otherwise, the person occupying such building as a dwelling house, may elect in which district such building and the adjacent land, owned, occupied and connected therewith shall be assessed, by serving a written notice of such election on the assessors of each tax district during the month of May; but if such election is not made, the property shall be assessed in the tax districts in which it is located.

Tax Law, § 10, as am'd by Laws 1898, chap. 537; Laws 1902, chap. 200; Laws 1903, chap. 305.

Where a farm, the whole of which is occupied, and which lies partly in each of two adjoining towns, is assessed by the assessors of the town in which the occupant does not reside, the assessment and tax founded thereon are illegal and void, and the assessors are personally liable for damages resulting therefrom.

Dorn v. Backer, 61 N. Y. 261; *Dorn v. Fox*, id. 264.

The whole farm should be assessed in the town in which the occupant resides.

People ex rel. Dixon v. Gaylord, 5 N. Y. Supp. 348; s. c., 52 Hun, 335.

People ex rel. Vandever, v. Wilson, 5 N. Y. Supp. 280; s. c., 52 Hun, 385; affd., 125 N. Y. 367. See *Tibo v. Brooklyn*, 134 id. 341.

When the part of the farm lying in each town was assessed in such town a bill of interpleader will lie by the owner of the farm against the two town collectors holding the warrants for the collection of such taxes.

Dorn v. Fox, 61 N. Y. 264.

And in such a case where the taxes had been collected a mandamus will lie against the board of supervisors to compel them to ascertain the amount that the owner should recover back.

People v. Supervisors of Essex Co., 70 N. Y. 228.

Property exempt from taxation.

§ 34. **Property exempt from taxation.**—The following property shall be exempt from taxation.

Tax Laws, § 4; 3 R. S. 3091.

1. **Property of the United States.**

Id., subd. 1.

2. **Property of this State other than its wild or forest lands in the forest preserve.**

Id., subd. 2.

3. **Property of a municipal corporation of the State held for a public use, except the portion of such property not within the corporation.**

Id., subd. 3.

By the General Corporation Law a "municipal corporation" includes "a county, town, school district, village and city and any other territorial division of the state established by law with powers of local government."

Corporation Law, § 3, subd. 1; 1 R. S. 649.

The statute now provides that the portion of such property not situated within the corporation is taxable.

Formerly it was exempted whether within or without the corporation.

People v. Mayor, 111 N. Y. 505; Rochester v. Town of Rush, 80 id. 302.

A private corporation organized as a water-works company which has contracted to furnish a town or village with water for a compensation is not exempt.

People v. Forrest, 97 N. Y. 97.

4. **The lands in any Indian reservation owned by the Indian nation, tribe or band occupying them.**

Id., subd. 4. See, also, Indian Law, § 6; 2 R. S. 1488, chap. 688, Laws 1892.

But a native Indian may take, hold and convey real property the same as a citizen. Upon becoming a freeholder to the value of \$100 he shall be subject to taxation.

Indian Law, § 2; 2 R. S. 1487.

5. **All property exempt by law from execution, other than an exempt homestead.** But real property purchased with the proceeds of a pension granted by the United States for military or naval services, and owned and occupied by the pensioner, or by his wife or widow, is subject to taxation as herein provided. Such property shall be assessed in the same manner as other real property in the tax districts. At the meeting of the assessors to hear the complaints concerning assessments, a verified application for the exemption of such real property from taxation may be presented to them by or on behalf of the owner thereof, which appli-

Property exempt from taxation.

cation must show the facts on which the exemption is claimed, including the amount of pension money used in or toward the purchase of such property. If the assessors are satisfied that the applicant is entitled to the exemption, and that the amount of pension money used in the purchase of such property equals or exceeds the assessed valuation thereof, they shall enter the word "exempt" upon the assessment-roll opposite the description of such property. If the amount of such pension money used in the purchase of the property is less than the assessed valuation, they shall enter upon the assessment-roll the words "exempt to the extent of dollars" (naming the amount) and thereupon such real property, to the extent of the exemption entered by the assessors, shall be exempt from State, county and general municipal taxation, but shall be taxable for local school purposes, and for the construction and maintenance of streets and highways. If no application for exemption be granted, the property shall be subject to taxation for all purposes. The entries above required shall be made and continued in each assessment of the property so long as it is exempt from taxation for any purpose. The provisions herein, relating to the assessment and exemption of property purchased with a pension apply and shall be enforced in each municipal corporation authorized to levy taxes.

Id., subd. 5, as am'd by chap. 347, Laws 1897.

6. Bonds of this State to be hereafter issued by the comptroller to carry out the provisions of chapter seventy-nine of the laws of eighteen hundred and ninety-five and bonds of a municipal corporation heretofore issued for the purpose of paying up or retiring the bonded indebtedness of such corporation.

Id., subd. 6, as am'd chap. 80, Laws 1897.

7. The real property of a corporation or association organized exclusively for the moral or mental improvement of men or women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, scientific, literary, library, patriotic, historical or cemetery purposes, or for the enforcement of laws relating to children or animals, or for two or more of such purposes, and used exclusively for carrying out thereupon one or more of such purposes; and the personal property of any such corporation shall be exempt from taxation. But no such corporation or association shall be entitled to any such exemption if any officer, member or employe thereof shall receive

Property exempt from taxation.

or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof, for any such avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association, or for any of its members or employes, or if it be not in good faith organized or conducted exclusively for one or more of such purposes. The real property of any such corporation or association entitled to such exemption held by it exclusively for one or more of such purposes and from which no rents, profits or income are derived, shall be so exempt, though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon, if the construction of such buildings or improvements is in progress, or is in good faith contemplated by such corporation or association; or if such real property is held by such corporation or association upon condition that the title thereto shall revert in case any building not intended and suitable for one or more of such purposes shall be erected upon said premises or some part thereof. The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes but leased or otherwise used for other purposes, shall not be exempt, but if a portion only of any lot or building of any such corporation or association is used exclusively for carrying out thereupon one or more such purposes of any such corporation or association, then such lot or building shall be so exempt only to the extent of the value of the portion so used, and the remaining or other portion, to the extent of the value of such remaining or other portion, shall be subject to taxation; provided, however, that a lot or building owned and actually used for hospital purposes, by a free public hospital, depending for maintenance and support upon voluntary charity shall not be taxed as to a portion thereof leased or otherwise used for the purposes of income, when such income is necessary for, and is actually applied to the maintenance and support of such hospital, and further provided that the real property of any fraternal corporation, association or body created to build and maintain a building or buildings for its meeting or meetings of the general assembly of its members, or subordinate bodies of such fraternity and for the accommodation of other fraternal bodies or associations, the entire net income of which real property is exclu-

Property exempt from taxation.

sively applied or to be used to build, furnish and maintain an asylum or asylums, a home or homes, a school or schools, for the free education or relief of the members of such fraternity, or for the relief, support and care of worthy and indigent members of the fraternity, their wives, widows or orphans, shall be exempt from taxation. Property held by any officer of a religious denomination shall be entitled to the same exemptions, subject to the same conditions and exceptions, as property held by a religious corporation.

Tax Law, § 4, subd. 7, as am'd by Laws 1897, chap. 371; Laws 1903, chap. 204; Laws 1906, chap. 336.

In order to be exempt under this subdivision the association must be an incorporated one.

Church of St. Monica v. Mayor, 119 N. Y. 91, and cases cited. See subd. 9, post.

Organizations incorporated for "literary purposes and promotion of fine arts," or "for promotion of benevolent and charitable purposes," but whose buildings are also used for social recreation and fellowship, or a boarding or rooming house for its members, or whose buildings are rented for public meetings and entertainments at fixed rentals, are not within the exemption above allowed.

People v. Lawler, 74 A. D. 553; People v. Sayles, et al., 32 A. D. 197; affd., 157 N. Y. 677.

The buildings must be used exclusively for the purposes set forth in the statute.

8. Real property of an incorporated association of present or former volunteer firemen actually and exclusively used and occupied by such corporation and not exceeding in value fifteen thousand dollars.

Tax Law, § 4, subd. 8.

9. All dwelling-houses and lots of religious corporations while actually used by the officiating clergymen thereof, but the total amount of such exemption to any one religious corporation shall not exceed two thousand dollars. Such exemption shall be in addition to that provided by subdivision seven of this section.

Tax Law, § 4, subd. 9.

10. The real property of an agricultural society permanently used by it for exhibition grounds.

Tax Law, § 4, subd. 10.

11. The real property of a minister of the gospel or priest who is regularly engaged in performing his duties as such, or permanently disabled, by impaired health, from the performance of such

Property exempt from taxation.

duties, or over seventy-five years of age, and the personal property of such minister or priest, but the total amount of such exemption on account of both real and personal property shall not exceed fifteen hundred dollars.

Tax Law, § 4, subd. 11.

Under this subdivision if the total of clergyman's real or personal property equals or exceeds \$1,500 he is entitled to an exemption to that amount and is only assessable for the excess.

People v. Peterson, 31 Hun, 421.

If assessors fail to allow such exemption the party aggrieved should appear before them on grievance day, present his proofs, and if his rights are still denied his remedy is by certiorari to review the assessment.

Williams v. Weaver, 75 N. Y. 30; *In re N. Y. Catholic Protectory*, 77 N. Y. 342.

12. All vessels registered at any port in this State and owned by an American citizen, or association, or by any corporation, incorporated under the laws of the State of New York, engaged in ocean commerce between any port in the United States and any foreign port, are exempted from all taxation in this State, for State and local purposes; and all such corporations, all of whose vessels are employed between foreign ports and ports in the United States, are exempted from all taxation in this State, for State and local purposes, upon their capital stock, franchises and earnings, until and including December thirty-first, nineteen hundred and twenty-two.

Tax Law, § 4, subd. 12; 3 R. S. 3092.

13. A bond, mortgage, note, contract, account or other demand, belonging to any person not a resident of this State, sent to or deposited in this State for collection; the products or another State, owned by a nonresident of this State and consigned to his agent in this State for sale on commission for the benefit of the owner; moneys of a nonresident of this State, under the control or in the possession of his agent in this State, when transmitted to such agent for the purpose of investment or otherwise.

Id., subd. 13; 3 R. S. 3093. See §§ 930 and 931, ante.

14. The deposits in any bank for savings which are due depositors, the accumulations in any domestic life insurance corporation, held for the exclusive benefit of the insured, other than real estate and stocks, now liable for taxation; the accumulations of any incorporated co-operative loan association upon the shares of such association held by any person; and personal property of

Property exempt from taxation.

any corporation, person, company or association transacting the business of fire, casualty or surety insurance in this state equal in value to the unearned premiums required by the laws of this state, or the regulations of its insurance department, to be charged as a liability.

Tax Law, § 4, subd. 14, as am'd by Laws 1901, chap. 618.

As against the depositor, the deposits are personal property, and are not taxable against him.

People ex rel. Heermance v. Dederick, 158 N. Y. 414.

The surplus of a savings bank, held not taxable against the bank,
157 N. Y. 51.

but the bank cannot be taxed for the deposits due its depositors.

People ex rel. I. S. Bk. v. Beers, 67 How. 219.

15. Moneys collected in the course of the business of any corporation, association or society doing a life or casualty insurance business or both, upon the co-operative or assessment plan, and which are to be used for the payment of assessments, or for death losses or for benefits to disabled members.

Id., subd. 15.

16. The owner or holder of stock in an incorporated company liable to taxation on its capital shall not be taxed as an individual for such stock.

Id., subd. 16.

17. The personal property in excess of one hundred thousand dollars of a mutual life insurance corporation incorporated in this State before April tenth, eighteen hundred and forty-nine.

Id., subd. 17.

18. Property real, from which no income is derived, and personal property, situated within any city of the first class and belonging to the medical society of any county, which county is either wholly or partly within such city and which society was heretofore incorporated under the provisions of chapter ninety-four, laws of eighteen hundred and thirteen, entitled "An act to incorporate medical societies for the purpose of regulating the practice of physic and surgery in this state," provided that such property is used for the purposes of such a society and not otherwise, and provided that such exemption of property for any society in the counties of Kings or New York, shall not exceed one

Report of assessors as to exempt property.

hundred and fifty thousand dollars, and in any other county affected hereby, shall not exceed fifty thousand dollars.

Tax Law, § 4, subd. 18, added by Laws 1903, chap. 199.

19. Property real from which no rent is derived and personal property, situated within any city of the first class and belonging to any incorporated pharmaceutical society of any county which is either wholly or partly within such city, which society has heretofore been or may hereafter be authorized and empowered by act of the legislature to establish and which has established or may hereafter establish, a college of pharmacy in such city, provided that such property is used for the purposes of such college and not otherwise, and provided also that the exemption of such property for any society in the counties of Kings and New York shall not exceed one hundred thousand dollars and in any other county affected hereby, shall not exceed fifty thousand dollars.

Tax Law, § 4, subd. 19, added by Laws 1905, chap. 446.

FORM OF APPLICATION FOR EXEMPTION.

To the Assessors of the Town of

The undersigned applicant, a resident of the town of, and the owner of real property situated in such town as hereinafter described, hereby makes this application to you, and respectfully states as follows:

1. That such property is situated in town of, and is described as follows:

2. That the assessed valuation of such property is dollars.

3. That a pension was secured by the applicant (or, by the applicant's husband, naming him), for military (or naval) services rendered the United States, and that, of the proceeds of such pension, the sum of dollars was used in the purchase of such real property.

Wherefore, he requests that such property be exempted from taxation for state, county and general municipal taxation, as provided by subdivision 5 of section 4 of the Tax Law.

STATE OF NEW YORK, }
COUNTY OF MONROE, } ss.:
Town of..... }

..... being duly sworn, deposes and says that he is the applicant for the above specified exemption; that he has read the foregoing application and knows the contents thereof; that the facts stated herein are true of his own knowledge, except as to the matters therein stated on information and belief and as to those matters he believes it to be true.

Subscribed and sworn to before me, }
this day of, 190.. }

Report of assessors as to exempt property.—It shall be the duty of the board of assessors of the several towns of this

Report of assessors as to exempt property.

state, and the boards of officials charged with the duty of assessing property for the purposes of taxation in the several cities of the state, to furnish to the clerks of the boards of supervisors of their respective counties, or in the case of the city of New York, to the city clerk of that city, on or before the first day of July in each year, a full and complete list and statement of all property situated within their respective districts exempt from taxation under the laws of this state. Such list and statement shall be made on blanks furnished by the state board of tax commissioners and in such form and to contain and set forth all the information relative to such property and the situation and value thereof, as may be required by the state board of tax commissioners, and to be verified in the same manner as assessments of property for the purposes of taxation and in the city of New York by the chief deputy of the department of taxes and assessments. The state board of tax commissioners shall prepare and transmit to the clerk of the board of supervisors in each county and to the city clerk of the city of New York, a sufficient number of such blanks, on or before the first day of May in each year, and the clerks of the boards of supervisors and the city clerk of the city of New York shall forthwith, upon the receipt thereof, distribute the same among the boards of assessors for use in preparing the statement herein required. And it shall be the duty of the clerk of the board of supervisors of each county and of the city clerk of the city of New York, to transmit such completed lists or statements to the state board of tax commissioners, on or before the first day of August in each year, and the state board of tax commissioners shall tabulate such statements, and on or before the first day of February in each year, cause to be published in their annual report to the legislature, a complete tabulated statement, based upon the statement so transmitted to the state board of tax commissioners of all real estate in the several counties of the state, which is exempt from taxation.

Immediately upon the receipt of the completed reports by the various clerks of the board of supervisors, and the city clerk of the city of New York, those officials shall prepare a tabulated statement of the returns received and shall post a copy thereof in a conspicuous place, and in all cities of the state cause a copy thereof to be published in the official paper or papers of said city at least once in each week for three successive weeks. The expense of such publication shall be a city charge and shall be audited and

Report of assessors as to exempt property.

paid in the same manner as charges for other city notices are audited and paid.

Tax Law, § 15, added by Laws 1904, chap. 438.

An intent to exempt any property is not to be presumed. It must be described in clear language and must affirmatively appear to have been the intention of the legislature to make such exemption.

Matter of Mayor, 85 App. Div. 347.

The statutes conferring exemptions are to be strictly construed.

Buffalo v. Buffalo, 46 N. Y. 506.

The assessors have no power to determine what property is taxable; that belongs to the legislature.

Natl. Bank v. Elmira, 53 N. Y. 49.

An assessment of exempt property is void.

Leopolt v. Maltby, 10 Misc. 10 Misc. 331.

If any doubt or ambiguity arises from the wording of the statute, it is to be determined in favor of taxation.

Sutherland on Statutory Construction, 365; People v. Coleman, 135 N. Y. 231.

Exemption is a privilege and is not transferable unless so permitted by statute.

Hebrew School v. Mayor, 99 N. Y. 488.

An exemption of property from taxation can only be when the property is owned by a person entitled to the exemption.

Church v. Mayor, 119 N. Y. 91; Association v. Mayor, 104 N. Y. 581; People v. Assessors, 97 N. Y. 648.

Exempt property should not be placed upon the roll by the assessors.

In re 2nd Ave. Church, 66 N. Y. 395.

An exemption from all public taxes, rates and assessments has been held not to exempt property from an assessment for a local improvement.

Roosevelt etc. v. Mayor, 84 N. Y. 108.

The assessable character of property seems to be determined on July 1st. The assessors have from May 1st to July 1st to ascertain the taxable property. After that date the assessors have no power to add names or property, and after August 1st have no power to strike names from the roll except as authorized to do so on review day. The reasonable intentment of the statute is that the books are closed to applicants for corrections on July 1st and if on that day a person is entitled to exemption it should be allowed, and if not entitled to such right on July 1st, then the property must be assessed.

Clark v. Norton, 58 Barb. 434; affd., 49 N. Y. 243. People v. Neff, 15 A. D. 8; Binghampton T. Co. v. Binghampton, 72 A. D. 341; Mygatt v. Washburn, 15 N. Y. 316; Bell v. Pierce, 51 N. Y. 12; Overing v. Foote, 65 N. Y. 263. See, also, Ass'n v. Mayor, 104 N. Y. 581; see Tax Law, § 20.

As a rule the exemption spoken of does not exempt the property, not even state property, from assessments for local improvements, i.e., highways, bridges, street and sewer improvements.

Hussan v. City of R., 67 N. Y. 528; Roosevelt Hosp. v. Mayor, 84 N. Y. 108; Van Devere v. L. I. Cor., 139 N. Y. 139; Matter of Hun, 144 N. Y. 477.

Householders' exemptions.

The mere grant by the legislation of an exemption is revokable at will.

If, however, the grant be in the nature of a private contract it is not so revokable.

Stock Tax Titles, § 116.

The following exemptions have been held revokable—an exemption to a hospital

People v. Comr., 47 N. Y. 501.

An exemption to the amount \$500 for service in the militia.

People v. Roper, 35 N. Y. 629.

To members of National Guard.

People v. Bd. Assrs., 84 N. Y. 610.

To a railroad.

Hewitt v. N. Y. & O. R. R., 12 Blach 452; Memphis v. Comr., 112 U. S. 609.

If the exemption is founded upon a contract with a consideration moving to the public such as to encourage industry, schools, libraries or charitable institutions, or if the state exempt property of an individual or corporation or part of it for all future taxation, or for a limited time, and if such engagement is positive and express, it is good and cannot be revoked at will.

Black Tax Titles, § 116; People v. O'Brien, 111 N. Y. 1; People v. Dohling, 6 A. D. 86; New Jersey v. Wilson, 7 Cranch 164; McGee v. Mather, 4 Wall. 143; Pacific v. McGuire, 20 Wall. 36.

§ 35. **Householders' exemptions.**—The following personal property, when owned by a householder, is exempt from levy and sale by virtue of an execution, and each movable article thereof continues to be so exempt while the family or any of them, are removing from one residence to another.

Code Civ. Pro., § 1390, as am'd in 1891.

1. All spinning-wheels, weaving-loom, and stoves put up or kept for use in a dwelling-house; and one sewing-machine with its appurtenances.

2. The family Bible, family pictures and school-books used by or in the family; and other books not exceeding in value \$50, kept and used as part of the family library.

3. A seat or pew occupied by the judgment debtor, or the family, in a place of public worship.

4. Ten sheep, with their fleeces, and the yarn or cloth manufactured therefrom; one cow, two swine; the necessary food for those animals; all necessary meat, fish, flour, groceries and vegetables actually provided for family use; and necessary fuel, oil and candles for the use of the family for sixty days.

5. All wearing apparel, beds, bedsteads and bedding necessary for the judgment debtor and the family; all necessary cooking utensils; one table; six chairs; six knives; six forks; six spoons;

Exemptions.

six plates, six tea cups; six saucers; one sugar dish; one milk pot; one tea pot; one crane and its appendages; one pair of andirons; one coal-scuttle; one shovel; one pair of tongs; one lamp and one candle-stick.

6. The tools and implements of a mechanic, necessary to the carrying on of his trade, not exceeding in value \$25.

Id., § 1390.

In addition to the exemptions allowed by the last section, necessary household furniture, working tools and team, professional instruments, furniture and library, not exceeding in value \$250, together with the necessary food for the team, for ninety days, are exempt from levy and sale by virtue of an execution, when owned by a person being a householder, or having a family for which he provides, except where the execution is issued upon a judgment, recovered wholly upon one or more demands, either for work performed in the family as a domestic, or for the purchase-money of one or more articles, exempt as prescribed in this or the last section.

Id., § 1391, as am'd by Laws 1901, chap. 116; Laws 1903, chap. 461.

Where the judgment debtor is a woman, she is entitled to the same exemptions from levy and sale by virtue of an execution, subject to the same exceptions as prescribed in the last two sections in the case of a householder.

Id., § 1392, as am'd 1877.

The term "householder," has a very well-defined meaning and imports the master or head of a family who reside together and constitute a household.

Chamberlain v. Darrow, 46 Hun, 48-51.

Householder means the head, master or person who has charge of and provides for a family and does not apply to the subordinate members or inmates of the household.

Bowne v. Witt, 19 Wend. 475; *Griffin v. Sutherland*, 14 Barb. 456.

One who rents a house and keeps boarders and servants is a householder.

Van Vechten v. Hall, 14 How. 436.

A person does not lose the character by temporarily ceasing to keep house and storing his property, with a view to return to it again and renew house-keeping.

Griffin v. Sutherland, 14 Barb. 456; *Cantrell v. Cantrell*, 51 How. 45.

A man and his daughter (the wife and mother being dead) who live together are a family.

Cox v. Stafford, 14 How. 519.

Military pay, rewards, et cetera, exempt from execution and other legal proceedings.—The pay and bounty of a non-com-

Burial ground exemption.

Commissioned officer, musician or private in the military or naval service of the United States or the State of New York; a land warrant, pension or other reward heretofore or hereafter granted by the United States, or by a State, for military or naval services; a sword, horse, medal, emblem or device of any kind presented as a testimonial for services rendered in the military or naval service of the United States or a State; and the uniform, arms and equipments which were used by a person in that service, are also exempt from levy and sale, by virtue of an execution, and from seizure for non-payment of taxes, or in any other legal proceeding; except that real property purchased with the proceeds of a pension granted by the United States for military or naval services, and owned by the pensioner, or by his wife or widow, is subject to seizure and sale for the collection of taxes or assessments lawfully levied thereon.

This act shall take effect September first, eighteen hundred and ninety-six.

Id., § 1393.

A right of action to recover damages, or damages awarded by a judgment, for taking or injuring personal property exempt by law from levy and sale by virtue of an execution, are exempt for one year after the collection thereof from levy and sale by virtue of an execution, and from seizure in any other legal proceeding.

Id., § 1394.

Burial ground exemption.—Land set apart as a family or private burying-ground, and heretofore designated, as prescribed by law, in order to exempt the same, or hereafter designated for that purpose, as prescribed in the next section, is exempt from sale, by virtue of an execution, upon the following conditions only:

1. A portion of it must have been actually used for that purpose.

2. It must not exceed in extent one-fourth of an acre.

3. It must not contain, at the time of its designation, or at any time afterward, any building or structure, except one or more vaults or other places of deposit for the dead, or mortuary monuments.

Id., § 1395.

In order to designate land, to be exempted as prescribed in the last section, a notice containing a full description of the land to

Exemptions.

be exempted, and stating that it has been set apart for a family or private burying-ground, must be subscribed by the owner; acknowledged or proved, and certified, in like manner as a deed to be recorded in the county where the land is situated; and recorded in the office of the county clerk or register of that county, in the proper book for recording deeds, at least three days before the sale of the land, by virtue of the execution.

Id., § 1396.

Exception.—The enumeration of the property which is exempt from levy and sale by virtue of an execution does not repeal any special provision of law relating to such an exemption which, by its terms, is applicable only to a particular class of persons or corporations, or to a particular locality, or otherwise to a special case.

Code Civ. Pro., § 1389.

New exemptions.—The money paid by any corporation (insuring lives on the stipulated premium plan) to a member or beneficiary, shall be exempt for execution and shall not be liable to be seized, taken or appropriated by any legal or equitable process to pay any debt or liability of a member or the widow or minor children of a deceased member of such corporation or association as the beneficiary thereof.

Laws 1898, chap. 85, sec. 317.

§ 36. **Exemptions of building and mutual loan corporations.**—All accumulations upon shares in said association held by any person shall be exempt from execution and the association itself shall be deemed an institution for savings, and not taxable under any tax law which shall exempt savings banks or institutions for savings from taxation. * * *

Banking Law, part of § 187.

§ 37. **Taxation and exemption of real estate mortgages.**—**Definitions.**—The words real property and real estate as used in this article, in addition to the definition thereof contained in section two of this chapter shall be understood to include everything a conveyance or mortgage of which can be recorded as a conveyance or mortgage of real property under the laws of the State. The words mortgage of real property as used in this article include every mortgage by which a lien is created over or imposed on real property or which affects the title to real property, notwithstand-

Exemptions, recording tax.

ing that it may also be a lien on personal or other property or that personal or other property may form part of the security for the debt or debts secured by such mortgage. Executory contracts for the sale of real property under which the vendee has or is entitled to possession shall be deemed to be mortgages for the purposes of this article and shall be assessed at the amount unpaid on such contracts.

Tax Law, § 290, as am'd by Laws 1906, chap. 532.

Exemption from local taxation.—All mortgages of real property situated within the state which are taxed by this article and the debts and the obligations which they secure, together with the paper writings evidencing the same, shall be exempt from other taxation by the state, counties, cities, towns, villages, school districts and other local subdivisions of the state, except that such mortgage shall not be exempt from the taxes imposed by sections twenty-four, one hundred and eighty-seven, one hundred and eighty-seven-a, one hundred and eighty-seven-b and article ten of the tax law; but the exemption conferred by this section shall not be construed to impair or in any manner affect the title of any purchaser of land or real estate which may be sold for nonpayment of taxes levied by any local authority.

Tax Law, § 291, as am'd and renumbered by Laws 1906, chap. 532.

Exemptions.—No mortgage of real property situated within this state shall be exempt, and no person or corporation owning any debt or obligation secured by mortgage of real property situated within this state shall be exempt, from the taxes imposed by this article by reason of anything contained in any other statute, or by reason of any provision in any private act or charter which is subject to amendment or repeal by the legislature, or by reason of nonresidence within this state or for any other cause.

Tax Law, § 292, as am'd and renumbered by Laws 1906, chap. 532.

Recording tax.—A tax of fifty cents for each hundred dollars and each remaining major fraction thereof of principal debt or obligation which is, or under any contingency may be secured by mortgage of real property situated within the state recorded on or after the first day of July, nineteen hundred and six, is hereby imposed on each such mortgage, and shall be collected and paid as provided in this article.

Tax Law, § 293, as am'd and renumbered by Laws 1906, chap. 532.

Payment of taxes, nonpayment, trust mortgages.

Payment of taxes.—The taxes imposed by this article shall be payable on the recording of each mortgage of real property subject to taxes thereunder. Such taxes shall be paid to the recording officer of any county in which the real property or any part thereof is situated. It shall be the duty of such recording officer to indorse upon each mortgage a receipt for the amount of the tax so paid. Any mortgage so indorsed may thereupon or thereafter be recorded by any recording officer and the receipt for such tax indorsed upon each mortgage shall be recorded herewith. The record of such receipt shall be conclusive proof that the amount of tax stated therein has been paid upon such mortgage.

Tax Law, § 294, as am'd and renumbered by Laws 1906, chap. 532.

Effect of nonpayment of taxes.—No mortgage of real property shall be recorded by any county clerk, or register on or after the first day of July, nineteen hundred and six, unless there shall be paid the tax imposed by and as in this article provided. No mortgage of real property which is subject to the taxes imposed by this article shall be released, discharged of records or received in evidence in any action or proceeding, nor shall any assignment of or agreement extending any such mortgage be recorded unless the taxes imposed thereon by this article shall have been paid as provided in this article. No judgment or final order in any action or proceeding shall be made for the foreclosure or enforcement of any mortgage which is subject to the taxes imposed by this article or of any debt or obligation secured by or which secures any such mortgage, unless the taxes imposed by this article shall have been paid as provided in this article.

Tax Law, § 295, as am'd and renumbered by Laws 1906, chap. 532.

Trust mortgages.—In the case of mortgages made by corporations in trust to secure payment of bonds or obligations issued or to be issued thereafter, if the total amount of principal indebtedness which under any contingency may be advanced or accrue or which may become secured by any such mortgage which is subject to this article has not been advanced or accrued thereon or become secured thereby before such mortgage is recorded, it may contain at the end thereof a statement of the amount which at the time of the execution and delivery thereof has been advanced or accrued thereon or which is then secured by such mortgage; thereupon the tax payable on recording of the mortgage shall be computed on the basis of the amount so stated to have been so advanced

Payment over and distribution of taxes.

or accrued thereon or which is stated to be secured thereby. Such statement shall thereafter at all times be binding upon and conclusive against the mortgagee, the holders of any bonds or obligations secured by such mortgagee and all persons claiming through the mortgagee any interest in the mortgage or in the mortgaged premises. The tax for such sums of principal indebtedness as may be advanced, accrue or become secured after the execution and delivery of any such mortgage shall be payable at or before the time when such sums are advanced, accrue or become secured. Such additional tax shall be paid to the recording officer where such mortgage has been or is first recorded and a receipt therefor shall be indorsed upon the mortgage and payment therefor shall be noted in the margin of the record of such mortgage and the note of such payment or additional payment shall have the same force and effect as the record of receipt of the tax which under this article is payable at or before the recording of the mortgage.

Tax Law, § 296, as am'd and renumbered by Laws 1906, chap. 532.

Payment over and distribution of taxes.—Upon the first day of each month the recording officer of each county shall pay over to the county treasurer of said county, and in the counties of New York, Kings, Queens and Richmond to the chamberlain of the city of New York all moneys received during the preceding month upon account of taxes paid to him as herein described, after deducting the necessary expenses of his office as provided in section two hundred and ninety-nine, except taxes paid upon a mortgage which under the provisions of section two hundred and ninety-seven is to be apportioned by the state board of tax commissioners between several counties, which taxes and money shall be paid over by him as provided by the determination of said state board of tax commissioners within five days after the filing of said determination in his office. The county treasurer of each county and in the counties of New York, Kings, Queens and Richmond the city chamberlain of the city of New York, shall on the first day of January, nineteen hundred and seven, and quarterly thereafter, after having deducted the necessary expenses of his office provided in section two hundred and ninety-nine transmit one-half of this net amount collected under the provisions of this article to the state treasurer and shall receive from the state treasurer a receipt therefor countersigned by the comptroller. And the remaining portion thereof in the counties of New York, Kings,

Payment over and distribution of taxes.

Queens and Richmond shall be paid into the general fund of the city of New York and be applied to the reduction of taxation, and in the other counties of the state the remaining portion shall be held by the respective county treasurers subject to the order of the board of supervisors as hereinafter provided. Prior to the first day of December in each year the county clerk shall cause to be prepared a list containing a description of all mortgages upon which taxes have been paid by a reference to the date of each mortgage, the name of the mortgagor and mortgagee, the amount of the principal debt upon which the tax was paid together with the book and page where said mortgage is recorded, together with the town, city or village in which the mortgaged property is assessed, and if assessed in two or more tax districts the amount apportioned to each tax district by the state board of tax commissioners, and shall file the statement in his office and shall furnish a copy thereof to the clerk of the board of supervisors, and another copy thereof to the county treasurer. The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from the statement filed with their clerk by the county clerk the location of the mortgaged property with respect to the several tax districts and the amount of tax properly to be credited to each town, city and village and of the sum so credited to each town which does not contain within its boundaries an incorporated village or portion thereof and to each city other than the city of New York, one-half thereof shall be applicable to the payment of school taxes and one-half thereof shall be applicable to the payment of state, county and city, or town expenses where the town contains within its limits a city, incorporated village, or portion thereof, the supervisor shall apportion to the city, village or villages so much of the share credited to the said town as the assessed value of said city, village or portion thereof bears to twice the total assessed valuation of the town, and one-half of the remaining balance shall be applicable to the payment of state, county and town taxes, and one-half to the payment of school taxes. The board of supervisors of each county, on or before the fifteenth day of December each year shall determine the respective sums applicable hereunder to each of the foregoing purposes and shall issue their warrant for the payment to the city or town collector of the amount payable to said city or town, and their warrant for the payment to the village treasurer of the sum of money to which the village shall be entitled, and for the payment to the city official having authority to

Tax on mortgages; cemeteries.

receive the other moneys raised by tax for school purposes in said municipality, and to the supervisor of each town of the amount to which the town is entitled for the payment of school taxes; and it shall be the duty of said supervisor of a town to apportion the sum so paid to him for school purposes between the several school districts upon the basis of the aggregate days' attendance as appears from the statement filed with him by the school commissioners in March of each year and shall notify the trustee or trustees of said school district of the amount standing to the district's credit in his hands, which sum shall be deducted from the next annual school levy of said district and shall be paid by the supervisor to the collector of the school district as soon as the said collector shall have received his warrant for the collection of the next annual tax.

Tax Law, § 298, as am'd and renumbered by Laws 1906, chap. 532.

Tax on prior advance mortgages.—A tax is imposed hereby on each mortgage of real property recorded prior to the first day of July, nineteen hundred and six, when any part of the amount of principal indebtedness which is or under any contingency may be secured by any such mortgage is advanced, after first day of July, nineteen hundred and six. The tax imposed by this section shall be at the rate of fifty cents for each one hundred dollars and each remaining major fraction thereof which is, or under any contingency may be secured by any mortgage taxed under this section, deducting therefrom, however, any tax paid on such mortgage under chapter seven hundred and twenty-nine of the laws of nineteen hundred and five. The tax imposed by this section shall be paid to the recording officer of the county in which the mortgage is first recorded and shall be paid when at any time any part of the said amount of principal indebtedness is advanced after the first day of July, nineteen hundred and six.

Tax Law, § 301, as am'd and renumbered by Laws 1906, chap. 532.

Sections 290–301 of the Tax Law, as amended and renumbered by Laws 1906, chap. 532, took effect July 1, 1906.

§ 38. **Cemeteries.**—No land actually used and occupied for cemetery purposes shall be assessed.

Laws 1879, chap. 310.

This act does not apply to any lands held by the city of Rochester.

Id., 3.

The cemetery lands and property of any association formed pursuant to this act, and any property held in trust by it for any of

Soldiers' monument associations, co-operative insurance, etc.

the purposes mentioned in section nine of this act, shall be exempt from all public taxes, rates and assessments, and shall not be liable to be sold on execution, or be applied in payment of debts due from any individual proprietor. But the proprietors of lots or plots in such cemeteries, their heirs or devisees, may hold the same exempt therefrom, so long as the same shall remain dedicated to the purposes of a cemetery, and during that time no street, road, avenue or thoroughfare shall be laid out through such cemetery, or any part of the lands held by such association, or any part of the lands held by such association for the purposes aforesaid, without consent of the trustees of such association, except by special permission of the legislature of the State.

Laws 1847, chap. 133, § 10, as am'd by chap. 31, Laws 1877; 1 R. S. 378.

A cemetery whose property is exempt by statute continues exempt even as an ordinance of a municipality forbids the burial of bodies therein.

People ex rel. Oak Hill v. Pratt, 129 N. Y. 68.

Such lands are exempt from the moment they are acquired by the association.

People ex rel. Oak Hill v. Pratt, 129 N. Y. 68.

§ 39. Soldiers' monument associations.—The property of such associations formed pursuant to chapter 273, Laws of 1866, and its amendments, is exempt from all public taxes, rates and assessments, and no street, road, avenue or thoroughfare shall be laid through the lands of such association held for the purposes of said act, without the consent of the trustees of such association, except by special permission of the legislature.

Laws 1866, chap. 273, § 5, as am'd by Laws 1888, chap. 299.

§ 40. Co-operative or assessment insurance or casualty companies—Exemption from execution.—The money or other benefit, charity, relief, or aid, paid or to be paid, provided or rendered by any such corporation, association or society shall not be liable to be seized, taken or appropriated by any legal or equitable process, to pay any debt or liability of a member, or any debt or liability of the widow of a deceased member of such corporation designated as the beneficiary thereof, which was incurred before such money was paid to her or such benefit, charity, relief or aid was provided or rendered.

Insurance Law, § 212, as am'd by chap. 345, Laws 1897.

§ 41. United States securities.—All stocks, bonds, treasury notes, and other obligations of the United States (which include all

Historical societies, hospitals, plankroads, etc. .

bonds, certificates of indebtedness, national currency, coupons, United States notes, treasury notes, fractional notes, certificates of deposit, bills, checks or drafts for money drawn by or upon authorized officers of the United States, stamps and other representatives of value of whatever denomination, which have been or may be issued under any act of congress), are exempt.

2 U. S. Revised Statutes, §§ 3701 and 5413.

This covers any values in excess of par value as well.

People v. Comrs., 90 N. Y. 63.

§ 42. **Historical societies.**—Any historical society in this State is hereby authorized to have and hold for the purposes of inclosure, preservation and the erection of monuments, but under no circumstances for the purposes of business, the sites of old forts and battles, not to exceed six acres in one locality, and when such sites have been so appropriated and improved and used for such purposes only, they shall be exempt from taxation,

Laws 1879, chap. 203, § 1; 2 R. S. 1463.

§ 43. **Hospital corporations.** The property of said corporation, both real and personal, shall be exempt from taxation, to the extent that, and so long as, the same shall be used exclusively for the care, reception, maintenance, medical and surgical advice, aid and treatment of persons needing such medical and surgical advice, aid and treatment, or the care and maintenance of infirm, aged and indigent persons, and provided that it shall and do actually render medical and surgical aid, advice and treatment to poor persons in need of such treatment without charge therefor, or care for and maintain infirm, aged and indigent persons without charge.

Laws 1889, chap. 95, § 4; 2 R. S. 1996.

§ 44. **Plankroads and turnpikes.**—So much of any bridge or tollhouse of any bridge corporation as may be within any town, city or village shall be liable to taxation therein as real estate.

Tollhouses and other fixtures and all property belonging to any plankroad or turnpike road corporation, shall be exempt from assessment and taxation for any purpose until the surplus annual receipts of tolls on its road over necessary repairs, and a suitable reserve fund for repairs or relaying of plank shall exceed seven per cent. per annum on the first cost of the road. If the assessors of any town, village or city and the corporation disagree concern-

Fraternal associations, fire companies exempt, etc.

ing any exemption claim, the corporation may appeal to the county judge of the county in which such assessment is proposed to be made, who shall, after due notice to both parties, examine the books and vouchers of the corporation and take such further proof as he shall deem proper and decide whether such corporation is liable to taxation under this section, and his decision shall be final.

Trans. Corp. Law, § 140; 3 R. S. 3286.

§ 45. Fraternal beneficiary societies, orders or associations.—

All money or other benefit, charity, relief or aid to be paid, provided, or rendered, or which has heretofore been paid or which shall hereafter be paid, provided or rendered by any such society, order or association, whether voluntary or incorporated under the insurance law or any other law, shall be exempt from execution.

Insurance Law, part of § 238, as am'd by Laws 1900, chap. 641; Laws 1901, chap. 397.

§ 46. Exemption from taxation of firemen and fire companies.

—Upon the adoption of a proposition therefor, the members of any fire, hose, protective or hook and ladder company in any village may be exempted from taxation to the amount of five hundred dollars on any assessment for village purposes, in addition to the exemptions otherwise allowed by law, and the real and personal property of any such company may also be exempted from like village taxation.

Village Law, § 132.

§ 47. Ascertaining facts for assessment.—The assessors in each tax district may, by mutual agreement, divide it into convenient assessment districts not exceeding the number of such assessors. The assessors in each tax district shall annually between May first and July first, ascertain by diligent inquiry all the property and the names of all the persons taxable therein, except that in towns containing an incorporated village having a population of more than ten thousand inhabitants according to the last state census the assessors may have from April fifteenth until July first to ascertain the taxable property and names of persons taxable in such town, and except that in towns containing an incorporated city having a population of more than ten thousand inhabitants according to the last state census where said city so situated shall have its own separate board of assessors, the town assessors may have from May first to July first to ascertain the taxable property and names of persons taxable in such towns,

Tax Law, § 20, as am'd Laws 1905, chap. 61.

Assessment of state lands, property of nonresidents.

§ 48. **Assessment of State land in forest preserves.**—All wild or forest lands within the forest preserve shall be assessed and taxed at a like valuation and rate as similar lands of individuals within the counties where situated. On or before August first in every year the assessors of the town within which the lands so belonging to the State are situated shall file in the office of the comptroller and of the board of fisheries, game and forest, a copy of the assessment-roll of the town, which, in addition to the other matter now required by law, shall state and specify which and how much, if any, of the lands assessed are forest lands, and which and how much, if any, are lands belonging to the State; such statements and specifications to be verified by the oaths of a majority of the assessors. The comptroller shall thereupon and before the first day of September following, and after hearing the assessors and the board of fisheries, game and forest, if they or any of them so desire, correct or reduce any assessment of State lands which may be in his judgment an unfair proportion to the remaining assessment of land within the town, and shall in other respects approve the assessment and communicate such approval to the assessors. No such assessment of State lands shall be valid for any purpose until the amount of assessment is approved by the comptroller, and such approval attached to and deposited with the assessment-roll of the town, and therewith delivered by the assessors of the town to the supervisor thereof or other officer authorized to receive the same from the assessors. No tax for the erection of a schoolhouse or opening of a road shall be imposed on the State lands unless such erection or opening shall have first been approved in writing by the board of fisheries, game and forest.

Tax Law, § 22

§ 49. **Nonresidents and assessment of real property of.**—The real property of nonresidents of the tax districts shall be designated in a separate part of the assessment-roll, and if it be a tract subdivided into lots or parts of a tract so subdivided, the assessors shall:

1. Designate it by its name, if known by one, or if not distinguished by a name or the name is unknown, state by what lands it is bounded.

2. Place in the first column the numbers of all unoccupied lots of any subdivided tract, without the names of the owner, begin-

Abandonment of lot divisions, surveys, etc.

ning at the lowest number and proceeding in numerical order to the highest, but the entry of the name of the owner shall not affect the validity of the assessment.

3. In the second column and opposite the number of each lot, the quantity of land therein.

4. In the third column and opposite the quantity, the full value thereof.

5. If it be a part of a lot, the part must be distinguished by boundaries or in some other way by which it may be identified. If any such real property be a tract not subdivided or whose subdivisions cannot be ascertained by the assessors, they shall certify in the roll that such tract is not subdivided, or that they cannot obtain correct information of the subdivisions and shall set down in the proper column the quantity and valuation as herein directed. If the quantity to be assessed is a part only of a tract, that part, or the part not liable, must be particularly described.

Tax Law, § 29.

§ 50. **Abandonment of lot divisions.**—Whenever more than ten years shall have elapsed after the subdivision of any tract of land into lots, plots or sites, with or without proposed streets, the owner of such tract, or of any part thereof composed of two or more contiguous lots may, by an instrument in writing, duly executed and acknowledged and describing such land, disclaim and abandon such subdivision including any streets not opened, accepted or used by the public and which are not necessary for the use of an owner or occupant of any part of said tract; and thereupon such subdivision, as to the lands described in such instrument, shall be deemed abandoned and of no effect; and thereafter the lands described therein shall, for the purpose of taxation, be regarded as a single tract. If a map of such subdivision has been filed in the office of the county clerk or register of deeds, such instrument may be recorded in said office, and a notice of such record shall thereupon be indorsed by the clerk or register upon such map. This section shall not apply to a county embracing a portion of the forest preserve.

Tax Law, § 41; 3 R. S. 3103.

§ 51. **Survey and maps of nonresident real property.**—If the assessors shall deem it necessary to have an actual survey made, to ascertain the quantity of any lot or tract of nonresident real

Assessment of agent, omitted property.

property divided by a town line, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town. If a part only of a tract of real property is liable to taxation as nonresident and the assessors cannot otherwise designate such part, they shall notify the supervisors of the town, who shall cause a survey and two manuscript maps to be made for the purpose of ascertaining the situation and quantity of such part. One of such maps shall be delivered to the county treasurer and by him to be transmitted to the comptroller in case the county in which the land is situated embraces a part of the forest preserve; and in other counties it shall be retained by him. The other map shall be delivered to the assessors, who shall then complete the assessment of the tract and deposit the map in the town clerk's office for the information of future assessors. The expense of making such survey shall be immediately repaid to the supervisor out of the county treasury and added by the board of supervisors to the tax on such tract, distinguishing it from the ordinary tax.

Tax Law, § 30; 3 R. S. 3100.

§ 52. **Assessment of agent, trustee, guardian or executor.**—If a person holds taxable property as agent, trustee, guardian, executor or administrator, he shall be assessed therefor as such, with the addition to his name of his representative character, and such assessment shall be carried out in a separate line from his individual assessment.

Tax Law, § 32; 3 R. S. 3101.

Valid and incontestable debts owing by him as such agent should be deducted from the valuation of the property so held by him.

People v. Comrs., 99 N. Y. 154-157.

§ 53. **Assessment of omitted property.**—The assessors of any tax district shall, upon their own motion, or upon the application of any taxpayer therein, enter in the assessment-roll of the current year any property shown to have been omitted from the assessment-roll of the preceding year, at the valuation of that year, or if not then valued, at such valuation as the assessors shall determine for the preceding year, and such valuation shall be stated in a separate line from the valuation of the current year.

Tax Law, § 33; 3 R. S. 3101.

Debts, how assessed.

The above is a revision of chapter 453, of Laws 1865, and differs from that law and apparently limits the property so to be entered to that which was omitted in the preceding year, and if not valued in the preceding year, then the assessors are to fix its value.

PETITION TO ASSESSORS TO HAVE OMITTED PROPERTY TAXED.

To the assessors of the town of

The undersigned, a taxpayer of the town of county, N. Y., hereby represents that certain property, consisting of lands, being part of Lot No. Town No., Range No., Section No., was omitted in the assessment-roll of this town for the year 18..; and asks that said property be entered in the assessment-roll of said town for the current year, as provided by chapter 908 of the Laws of 1896.

And your petitioner will ever pray, etc.

Dated, 19....

.....

§ 54. Debts owing to nonresidents of the United States, how assessed.—Every agent in any county of a nonresident creditor having debts owing to him, taxable in any county of the State, shall annually, on or before June first, furnish to the county treasurer of the county where the debtor resides, a true and accurate statement verified by his oath, of such debts owing on the first day of May next preceding in each town or ward in such county. The county treasurer shall, immediately upon the receipt of such statement, make out and transmit to the assessors of every tax district in the county in which any such debtor resides, a copy of so much of such statement as relates to the tax district of such assessors, with the name of the creditor. The assessors on receipt of such statement from the county treasurer shall, within the time in which they are required to complete the assessment-roll, enter therein the name of such nonresident creditor, and the aggregate amount due him in such tax district on the first day of May next preceding, in the same manner as other personal property is entered on the roll, adding the name of the debtor owing such debt. Any agent neglecting or refusing without good cause to furnish such statement to the county treasurer shall forfeit to the county in which the debtor resides the sum of five hundred dollars, recoverable by the district attorney, if the existence of such debt was known to the agent.

Tax Law, § 34; 3 R. S. 3101.

The assessors are not bound by the statement furnished, but may ascertain by whatever means are available the amount due within the district, and if no statement is furnished, then they shall ascertain the facts in best manner possible.

People v. Board of Comrs., 76 N. Y. 64; People v. Halsey, 37 N. Y. 344; People v. Comrs., 99 N. Y. 254.

Assessments against estates.

§ 55. **Assessments against “estates.”**—An assessment of real or personal property heretofore made shall not be deemed invalid, because the property was assessed to the “estate” of a decedent instead of to his personal representatives, devisees, legatees, heirs or next of kin.

Laws 1898, chap. 310, § 1.

CHAPTER THREE.

ASSESSMENT ROLLS, ETC.

- §56. Duties of supervisors after delivery of roll.

§57. Committee on form of assessment rolls.

§58. Footing assessment rolls.

§59. Erroneous assessments.

§60. Unpaid taxes.

§61. Rejected taxes.

§62. Form of committee on assessments.

§63. Equalization.

§64. Duties of commissioners.
- §65. Equalization by board of supervisors.

§66. Appeals to state board.

§67. Appeals, how conducted.

§68. Determination of appeals.

§69. Costs on appeal.

§70. Procedure on appeal.

§71. Levy of tax by supervisors.

§72. Form of assessment-roll, with tax extended.

§73. Tax-roll and collector's warrant.

§74. Validation of certain warrants.

§ 56. Duties of the supervisor after delivery of the roll.—The assessors have no right to make any changes affecting the substantial requirements of the roll; they have the right, and it is their duty, to amend and correct informalities. If it is not correct in form or if errors in footing it should be returned for correction.

R., W. & O. R. R. v. Smith, 39 Hun, 332.

It is the assessors' duty to foot each page. It is the practice also for the supervisor to insert in the back part of the roll a recapitulation of the footing of each page of the roll as follows:

TOWN OF.....

RECAPITULATION FOOTINGS.

	Real.	Personal.	Aggregate.	Dogs.
First page.....	\$5,000 00	\$3,000 00	\$8,000 00	4
Second page.....	4,000 00	1,000 00	5,000 00	0
Third page.....	6,000 00	4,000 00	10,000 00	6
And so on with each page of the roll.				
Total.....	\$2,575,000 00	\$625,000 00	\$3,200,000 00	65

SUMMARY.

Total valuation, personal.....	\$ 625,000 00
Total valuation, real.....	2,575,000 00
Aggregate valuation of town.....	\$3,200,000 00
Total number of dogs taxed, 60.	
.....	Supervisor.

Form of report.

§ 57. Committee on form of assessment-rolls.—On presenting the rolls to the board of supervisors, they are generally referred to the “committee on forms of the assessment-rolls,” whose duty it is to examine and see if they are correct in “form;” i. e., the proper affidavits and certificates are attached and sworn to after the third Tuesday of August, and that the other formalities specified in the preceding sections are complied with. From this committee the rolls go to the committee on footings.

Form of report.—

To the Board of Supervisors of County:
Your committee appointed on forms of assessment-rolls respectfully report:
That they have examined the assessment-rolls of the several towns and wards in the county, and find the same to be correct.
.....
Chairman.

§ 58. Committee on footing of assessment-rolls.—The duties of this committee are to see that the rolls are correctly footed. They cannot complete their work until the committee on “erroneous assessments” report, so that the changes in assessments can be properly made and inserted in the roll before the footing committee finish the footings.

FORM OF REPORT.

REPORT OF THE COMMITTEE ON FOOTING ASSESSMENT-ROLLS.

To the Board of Supervisors of the County of County:
Your committee beg leave to submit the following tabular statement, compiled from the rolls of the several towns and wards, as the assessed valuation of this county for the current year:

	Acres.	Real estate.	Personal.	Total.	Dogs.	Dog tax.
And so on.....	11,162	33,271,900	924,500	435,169	129	133
	521,701	139,261,721	2,325,400	162,515,721	321	403

All of which is respectfully submitted,
....., December 30, 190..
.....
Chairman.

Erroneous assessments, description of real property, etc.

§ 59. **Committee on erroneous assessments and powers of board.**—It often happens that boards of supervisors frequently transgress their power in the matter of assessments. It is not an infrequent occurrence to alter or change the rolls without right to do so. They have no right to review the proceedings of the assessors or interfere with valuations as fixed or exemptions as determined by assessors who are the sole judges. The taxpayer if aggrieved must appear before assessors on grievance day with his proofs and if he be denied the relief he seeks his remedy is to apply to the courts.

The Board of Supervisors has no jurisdiction in the matter; as has already been stated the Board has only such power as conferred by statute. If no statute can be found allowing them to act then they have no power.

In re Hermance, 71 N. Y. 481; *McMahon v. Palmer*, 102 N. Y. 176; *Mut. U. Tel. Co. v. Comr.*, 99 N. Y. 254; *Westfall v. Preston*, 49 N. Y. 349.

The Boards have power, however, as follows:

If the assessors neglect to meet on "grievance day" any person aggrieved by the assessment may appeal to the board of supervisors at their next meeting, who shall have power to review and correct the assessment of the person appealing.

Tax Law, § 40; see also § 1278.

Description of real property of nonresidents.—The board of supervisors of each county, at its annual meeting, shall examine the assessment-rolls of the several tax districts, and shall make such changes in the descriptions of the real property of nonresidents as may be necessary to render such descriptions sufficiently definite for the purposes of collection of taxes by sale thereof. If a sufficiently definite description cannot be obtained during the session, the board shall cause the same to be obtained for the next annual session, and the property shall not be taxed until such description is obtained, and shall then be taxed for the year so omitted, in the manner provided for taxing omitted lands.

Tax Law, § 51; 3 R. S. 3105.

Review of assessment against nonresident owners or rents reserved.—If an assessment of taxable rents shall have been made against any person in any tax district of which he is not an actual resident, the board of supervisors of the county shall have the same power and authority in all respects, and it shall be its duty to

Correction of errors.

correct such assessments as to the valuation of such rents and as to the gross amount for which such persons shall be assessed therefor, as the assessors of a tax district have as to the assessment of personal property of an actual resident of such tax district. The board may reduce the amount of any such assessment, if necessary, to make such assessment just when compared with the other assessments of property upon such roll.

Tax Law, § 52; 3 R. S. 3105.

This applies only as to a nonresident of the tax district.

People ex rel. Youmans v. Supervisors, 60 N. Y. 381-384; s. c., 47 How. 29.

The board of supervisors had no power to reduce the valuation so fixed by the assessors.

Correction of errors by board of supervisors.—If it shall be made to appear to the board of supervisors of any county, upon the verified petition of the assessors of any tax district:

First. That any property taxable therein has, by any mistake in transcribing or copying the assessment-roll of the preceding year, been placed on the assessment-roll delivered to the supervisor, at a valuation less than actually appearing upon the original roll signed by the assessors, such board shall insert in the assessment-roll of the current year an assessment of the property upon the valuation equal to the difference between the actual valuation made by the assessors and the amount at which, by such mistake, the property was placed upon the roll of the preceding year, and tax the same at the rate per centum imposed upon property in such tax district in the year in which the mistake occurred.

Second. That any taxable property therein has been omitted from the assessment-roll of the preceding year, such board shall place the same on the roll of the current year at its valuation for the preceding year, to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the preceding year.

Third. That taxable property has been omitted from the assessment-roll for the current year, such board shall place the same thereon at a valuation to be fixed by the assessors in their petition, and shall tax the same at the rate per centum of the current year.

A copy of the petition under the second or third subdivision of this section, with a notice of the presentation thereof to the board of supervisors, shall be served personally on the person alleged to be liable to taxation for the land omitted from the assessment-roll,

Property illegally assessed.

at least ten days before the meeting of the board of supervisors; and the board of supervisors shall take no action on such petition, unless proof of the personal service of such petition and notice be made to them by affidavit. The board of supervisors shall give to the person alleged to be liable to taxation for such omitted land, an opportunity to be heard, and on such hearing and review the board of supervisors shall have, as to such omitted property, all the powers of the assessors of a tax district in reviewing and correcting the assessment-roll. The whole amount of tax levied upon land or property omitted in the tax levy of the preceding year shall be deducted from the aggregate of taxation to be levied on the tax district for the current year before such tax is levied.

Tax Law, § 53; 3 R. S. 3106.

Where certain property (rents accruing from perpetual leases) had in 1864, been, in fact, assessed, but to a person not the owner of the rents, and upon petition of the assessors, the same property was put on the roll of 1865, and assessed to the true owner and a tax levied upon it for 1864, held, that such reassessment was legal and proper.

Overing v. Foote, 43 N. Y. 290.

That such property could not be reassessed without notice to the owner.

Same v. Same, 65 N. Y. 263.

If the time and place for the hearing is fixed by a statute, e. g., the annual meetings of the board of supervisors, or town board, such statute is sufficient notice, unless otherwise prescribed.

People v. Turner, 117 N. Y. 227.

Reassessment of property illegally assessed.—Whenever by the final judgment of a court of competent jurisdiction, it appears to the board of supervisors that any property liable to taxation in any year was erroneously or illegally assessed, and that by reason of such erroneous or illegal assessment, such property did not become subject to taxation for such year, the board shall place the same on the roll of the current year at the valuation thereof, if any, fixed by the assessors for such preceding year; and in case no valuation was fixed by the assessors, such property shall be assessed by the board at such valuation as they may determine for the preceding year. Before fixing such valuation, the board of supervisors shall give to the owners of such property, at the time of the assessment by the board, a notice of at least five days and an opportunity to be heard, and on such hearing, the board shall have, as to such property, all the powers of the assessors of a tax district in reviewing and correcting an assessment-roll. Such property shall be taxed at the rate per centum of such preceding

Unpaid taxes to be reassessed.

year. The whole amount of tax on property levied in pursuance of this section shall be deducted from the aggregate of taxation to be levied on the tax district for the current year, before such tax is levied.

Tax Law, § 54; 3 R. S. 3106.

Any such board may correct any manifest clerical or other error in any assessment or returns made by any one or more town officers to such board, or which may, or shall have properly come before such board for its action, confirmation or review: and cause to be refunded to any person the amount collected from him of any tax illegally or improperly assessed or levied, and upon the order of the county court, it shall refund any such tax. In raising the amount so refunded, or necessary to supply the deficiency caused by the correction of any error in such assessment, such board shall, in the same or next ensuing tax-levy, adjust and apportion such amount upon the property of the several towns and wards of the county as shall be just, taking into consideration the portion of the State, county, town and ward included therein, and the extent to which such town or ward has been benefited thereby. Such board shall ascertain, fix and determine the amount to which any person or corporation is equitably entitled to receive back from any town, for taxes paid while the boundary line between towns was in dispute and cause the same to be levied and collected.

County Law, § 16; 1 R. S. 739.

See chapter relating to the boards of supervisors where the subject is fully treated.

§ 60. **Unpaid taxes on resident real property to be reassessed.**—When the tax on any real property, not assessed as non-resident, is returned as unpaid and so remains, the county treasurer shall immediately deliver a transcript thereof to the supervisor of the tax district in which such tax was assessed. Such supervisor shall, if in his power, within thirty days thereafter, cause an accurate description of such real property to be made and returned to said treasurer, with the correct amount of taxes thereon, each kind of tax being stated separately, and if necessary, he may cause a survey and map of any said real property to be made, and the expense of such survey and map on, or for each lot or parcel shall be returned to said treasurer, and be a legal charge upon such real property and be collected with the taxes thereon. The

Rejected taxes, imperfect descriptions.

amount of such tax shall bear interest at the rate of eight per centum per annum from the first day of February until paid, or until the sale of such property to satisfy such tax by the county treasurer, or if the property is located in a county embracing a portion of the forest preserve, until the return of such unpaid tax to the comptroller. And such real property and the tax thereon shall be regarded for all purposes of assessment, collection and sale as non-resident, and subject to all the provisions of the tax law in relation to non-resident real property and non-resident taxes.

Tax Law, § 89, as am'd by Laws 1902, chap. 171.
Bennett v. Peck, 112 N. Y. 649.

The tax upon land of a resident may ultimately be made a lien on the land and enforced against it but only by proceedings subsequent to the first assessment.

Collins v. L. I. City, 132 N. Y. 321-325; Newman v. Supervisors, 45 id. 676.

Upon a return of a tax (on the land of a resident) uncollected the land is to be classed as nonresident as to such unpaid tax, and all proceedings for the collection thereof must thereafter be had as if it was the land of a nonresident, Newman v. Supr., 45 N. Y. 676.

unless the statute relating to the county prescribes otherwise.
Collins v. L. I. City, 132 N. Y. 321.

§ 61. Rejected taxes.—Transmittal of statement of canceled taxes to board of supervisors.—The comptroller shall transmit a transcript of the returns of all taxes canceled, with the addition of interest thereon, to the county treasurer, who shall deliver a copy thereof to a supervisor of the tax district in which such taxes were assessed, by whom it shall be returned to the board of supervisors at their next annual meeting. If such tax district shall have been divided since the assessment, the county treasurer shall deliver such transcript to the board of supervisors at their next annual meeting. If any such cancellation was by reason of the tax having been paid before the same was returned by the county treasurer, such treasurer shall present the transcript to the board of supervisors of the county, and the amount of such tax, with the interest, shall be collected by such board of the collector of the county treasurer who made the erroneous returns, and shall be paid into the State treasury.

Tax Law, § 105; 3 R. S. 3116.

Correction of imperfect descriptions.—The supervisor of the tax district in which any lands are situated, upon which a tax shall

Correct description of land.

have been rejected by the comptroller, or shall have been canceled and charged to the county to which it had previously been credited, shall add to the assessment-roll of the tax district in which the land is situated for the year during which a transcript of the returns of such taxes shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands, if he can obtain the same, the correct amount of taxes thereon, the tax of each year and each kind of tax separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall be required by him. Such supervisor may, if necessary, cause a survey and map of each lot or parcel returned for more perfect description to be made, and the expense of such survey and map shall be a town charge. The board of supervisors shall direct the collection of such taxes so added to such assessment-roll, and they shall be considered the taxes of the year in which the description shall be perfected. If any such supervisor shall not fully comply with the provisions of this section the comptroller shall not thereafter admit, but shall reject, all such reassessed, canceled or rejected taxes as may be returned to him. If such taxes are not levied upon such lands as herein required, the board of supervisors shall cause the same, with interest thereon, to be levied upon the tax district in which originally assessed, and collected with the other taxes of the same year. If the tax district shall have been divided since such assessment, such taxes and interest shall be apportioned by the board of supervisors among the tax districts included in the limits of such original tax districts in such equitable manner as it may deem proper.

Id., § 106; 3 R. S. 3117.

Correct description of land, etc., to be forwarded to comptroller.—Whenever the comptroller shall have rejected any tax in the first instance, or have canceled and charged the same to the county to which it had previously been credited, the supervisor of the town or ward in which such lands are situate, shall, if in his power, add to the assessment-roll of such town or ward for the year during which such transcript shall have been forwarded by the comptroller to the county treasurer, an accurate description of such lands and the correct amount of taxes thereon, stating the tax of each year and each kind of tax, separately, and shall furnish the comptroller with all such maps and surveys of such lands as shall have been required by him; and, if necessary, he may cause a sur-

Form of report.

vey and map of each lot or parcel returned for more perfect description to be made, and the expense of such survey and map shall be a charge upon such land, to be added to the tax thereon, the board of supervisors shall direct the collection of such taxes and the expenses so added to such assessment-roll, and they shall, for all the purposes of this act, be considered as taxes of the year in which the description shall be perfected. If the supervisor of such town or ward shall not have fully complied with the requirements of this section, the comptroller shall not thereafter admit, but shall reject all such reassessed, canceled or rejected taxes as may be returned to him. Whenever any tax has been rejected by the comptroller and returned to the county to which it had previously been credited, the board of supervisors of such county, or if there be no board of supervisors of such county, then the board of aldermen performing the duties of supervisors, shall direct that such rejected tax be canceled upon the tax-roll in the office of the treasurer of the county, for the year or years for which it was levied.

Laws 1878, chap. 152, as am'd by chap. 951, Laws 1896; 3 R. S. 3117.

§ 62. Form of report of committee on erroneous assessments.—

The Honorable Board of Supervisors of the County of

Your committee on erroneous assessments would respectfully report that we have carefully examined the matter of the erroneous assessment of set forth in the resolution of supervisor, presented, and we find (set forth whatever the facts may be in reference to such assessment), and therefore recommend the adoption of the following resolution:

Resolved, That the clerk of this board be and is hereby instructed and directed to draw an order on the county treasurer for the sum of dollars from the erroneous assessment fund in favor of for the purpose of refunding this erroneous tax; said amount of dollars to be charged against the town of, in the next tax levy.

All of which is respectfully submitted.

Dated, 190..

Upon the coming in of the report of the committee the board must act upon it. Final action cannot be delegated to individuals or to a committee.

People v. Hagadom, 104 N. Y. 516. .

Such action may be taken by resolution in substantially the following form:

Whereas, Certain manifest clerical errors and errors in footing existed in the assessment-rolls and assessments presented to this board by the officers of the several towns and wards of this county for their action, confirmation or review, and the same have been corrected by the committee on footing assessment-rolls, as follows: (Here specify the changes.)

Resolved, That the corrections so made by said committee, and the assessments and valuations as corrected on said assessment-rolls, be, and the same are hereby ratified, confirmed and legalized in pursuance of the County Law.

Commissioners of equalization.

§ 63. **Appointment of commissioners of equalization.**—The board of supervisors of any county of the State may by the concurring vote of a majority of all the supervisors elected to such board, resolve to appoint three persons to be commissioners of equalization of such county. They shall thereupon appoint such commissioners, two of whom shall be residents of such county and not members of the board of supervisors, and the third commissioner shall not be a resident of or a taxpayer in such county, but shall reside in the judicial district in which such county is situated. If there be one or more cities in such county one of such commissioners shall be a resident of such city or cities and one shall be a resident of the towns in such county outside of such city or cities. The commissioner appointed from such city or cities shall be named by the supervisors representing such city or cities, and the commissioner appointed from the towns outside of such city or cities shall be named by the supervisors representing such towns. Both such commissioners, including the third commissioner appointed from the judicial district outside of such county, shall be confirmed by a two-thirds vote of all the members of the board of supervisors. If, after such board has resolved to appoint such commissioners of equalization, they are unable to agree upon the commissioners to be appointed as provided by this section, and such commissioners are not appointed before the first day of July, succeeding the time when such resolution was adopted, the clerk of such board shall apply to the county judge of such county certifying to him the fact that such resolution was adopted and such commissioners have not been appointed pursuant thereto and such county judge shall appoint the commissioners subject to the provisions of this section relating to their places of residence. The term of office of each of such commissioners shall be three years. Not more than one commissioner shall reside in the same town or city, and if a commissioner remove to a town or city in which another commissioner resides, the office of the commissioner so removing shall thereupon become vacant. Such appointments shall be so made that not more than a majority of the commissioners belong to the same political party, and the other commissioner shall be chosen from the other political party polling in such county at the last general election either the highest or the next highest number of votes. If the office of any commissioner become vacant before the expiration of his term, such vacancy shall be filled, for the

Duties of equalization committee.

unexpired term, by the appointment of a person of the same political faith as his predecessor at the time of his appointment. Each commissioner shall be paid by the county for his services a sum to be fixed by the board of supervisors, not exceeding the rate of four dollars per day, for the time necessarily and actually occupied in the performance of his duties, and his necessary and reasonable expenses incurred while absent from his home in the discharge of his duties, but the total amount paid to any commissioner for his services and expenses in any one year shall not exceed three hundred dollars.

Laws 1896, chap. 820, § 1; 3 R. S. 3104.

§ 64. **Duties of Equalization Committee.**—Between the first day of September and the time of the annual meeting of the board of supervisors in each year, the commissioners shall examine the assessment-rolls of the several towns in their county, and shall visit each town therein for the purpose of ascertaining whether the valuations in one town or ward bear a just relation to the valuations in all the towns and wards in the county, and they may increase or diminish the aggregate valuations of real estate in any town or ward by adding or deducting such sum upon the hundred as may, in their opinion, be necessary to produce a just relation between all the valuations of real estate in the county, but they shall in no instance reduce the aggregate valuations of all the towns and wards below the aggregate valuations thereof as made by the assessors. If the office of any commissioner become vacant before the expiration of his term, such vacancy shall be filled for the unexpired term by the appointment of a person of the same political faith as his predecessor at the time of his appointment.

Laws 1896, chap. 820, § 2 as amended by Laws 1899, chap. 265.

On or before the fourth day of the annual meeting of the board of supervisors in each year the commissioners shall file with the clerk of such board of supervisors their report of the equalized valuations of real estate, signed by a majority of such commissioners, and the same shall be binding and conclusive on such board of supervisors as an equalization of the assessments of real estate for such year.

Id., § 3.

Duties of equalization committee.

REPORT — EQUALIZATION COMMITTEE.

Sup. Hopkins, from the committee on equalization, presented the following report, which was laid on the table under the rules:

To the Honorable, the Board of Supervisors of the County of Monroe:

Gentlemen — Your committee on equalization would respectfully report as follows: We have carefully considered the assessed values of the various towns and the city of Rochester and find the assessed value of the towns have increased \$970,433, and the assessed value of the city of Rochester has increased \$5,201,475, making an increase in the country of \$6,171,908.

The decrease in the assessed value of Brighton, amounting to \$731,895, is due to the fact that the village of Brighton is now included in the city of Rochester. The decrease in Chili, amounting to \$5,100, is due to the fact, we are advised, that the low lands in that town have been flooded by the river at flood time and land has depreciated in value. The decrease in the assessed value of Mendon, amounting to \$8,475, has not been satisfactorily explained. The decrease in Ogden, amounting to \$15,925, is due to the fact, we are advised, that the cold storage building has become valueless and depreciated \$5,000, and there has been several fires in the village and no rebuilding.

We have examined and compared the assessed valuation of real estate in the county and have established the assessed value as the equalized value as follows:

Towns.	Total Real, Property and Franchise.	Personal Estate.	Total Real, Personal and Franchise.
Brighton	\$1,771,377	\$12,400	\$1,783,777
Chili	1,899,783	22,850	1,922,633
Clarkson	1,057,850	38,550	1,096,400
Gates	2,646,543	47,600	2,694,143
Greece	4,145,358	102,755	4,248,113
Hamlin	1,458,975	42,000	1,500,975
Henrietta	1,659,550	69,050	1,728,600
Irondequoit	1,909,478	61,800	1,971,278
Mendon	2,242,125	159,200	2,401,325
Ogden	1,820,025	38,000	1,858,025
Parma	1,721,124	62,400	1,783,524
Penfield	1,374,039	34,949	1,408,988
Perinton	2,728,020	99,350	2,827,370
Pittsford	1,734,805	50,900	1,785,705
Riga	1,759,940	85,100	1,845,040
Rush	1,401,180	15,520	1,416,700
Sweden	2,825,367	242,000	3,067,367
Webster	1,421,837	49,750	1,471,587
Wheatland	1,361,455	61,575	1,423,030
Total towns.....	\$ 36,938,831	\$1,295,749	\$ 38,234,580
Total city.....	119,679,700	6,588,700	126,268,400
Total county.....	\$156,618,531	\$7,884,449	\$164,502,980

Resolved, That the clerk of this board in spreading the state and county tax for the year 1905, be, and he hereby is instructed and directed to spread or extend said taxes upon the total real, personal and special franchise as set

Board of supervisors.

forth in the above table and in the comparative table presented to this board November 1, 1905.

All of which is respectfully submitted.

JARED W. HOPKINS,
H. E. HAMIL,
H. B. CASH,
GRIFF D. PALMER.
GEORGE F. HARRIS,
J. L. GUERINOT,
E. H. WHITE.
M. W. NELLIGAN,
WM. HORCHELER,
F. W. TRUESDALE,
THADDEUS DUNN.
Committee on Equalization.

The report was adopted by the following vote:

Ayes — Sups. Aman, Ashton, Baumann, Brayer, Beard, Beebe, Cash, Clark, Collins, Defendorf, Dunn, Hamil, Harris, Hopkins, Horcheler, Manning, Nelligan, Owen, Remmel, Schwartz, Shafer, Starkweather, Truesdale, White, Wolff — 25.

Nays — None.

§ 65. **Equalization by board of supervisors.**—The board of supervisors of each county in this state, at its annual meeting, shall examine the assessment rolls of the several tax districts in the county, for the purpose of ascertaining whether the valuations in one tax district bear a just relation to the valuations in all the tax districts in the county; and the board may increase or diminish the aggregate valuations of real estate in any tax district, by adding or deducting such sum upon the hundred, as may, in its opinion, be necessary to produce a just relation between all the valuations of real estate in the county; but it shall, in no instance, except as provided in subdivision two of this section change the aggregate valuations of all the tax districts from the aggregate valuation thereof as made by the assessors.

The board of supervisors in any county of the state having a population of more than fifty-five thousand and less than sixty thousand according to the federal enumeration next preceding the passage of this act and which adjoins a city of the first class may, in its discretion, when examining the assessment rolls of the several tax districts of the county, as above provided, exclude from the tax rolls of said districts, to be prepared by said board, such parcels of real property as have been struck down to the county at a tax sale and not redeemed as provided in section one hundred and fifty-two of this act: No such properties shall be so excluded from said tax rolls except by a resolution of said board adopted at an annual meeting by a vote of a majority of the members

Redemption of real property.

thereof. Whenever such real property is so excluded from the tax rolls by the board the total of the assessed valuations of the real estate of the several tax districts, as the same appear on the completed tax rolls, shall be the aggregate valuation of the taxable real estate in the county.

Redemption of real property stricken from tax rolls.—The real property struck down to a county at said tax sale and omitted from the tax rolls as provided in section fifty of this act shall not be subject to further sale after having been once so sold for taxes. The real property so omitted from the tax rolls may be redeemed by the owner, occupant or any person having an interest in the same, provided the county has not acquired a title in fee to such real property, upon the payment to the county treasurer for the use and benefit of the county of a sum equal to the gross amount of the taxes, expenses of such sale, penalty and interest thereon, together with the tax and interest thereon which would have been due on said real property had it been taxed during each of the years it was so omitted from the tax rolls. The said taxes for each of the years during which said real estate is so omitted from the tax rolls shall be computed on the basis of the assessed valuations returned on said real property by the assessors of the several tax districts and at the rate fixed by the board of supervisors as the tax rate for the tax district within which said real estate is situated.

Tax Law, § 50, as am'd by Laws of 1905, chap. 447.

The proper procedure is to add a certain sum to every one hundred dollars instead of adding a gross sum to the aggregate valuation.

Talmadge v. Bd. of Suprs. of Rensselaer Co., 21 Barb. 611; *Nehasane, etc., v. Loyd*, 45 A. D. 631; *affd.*, 167 N. Y. 436.

The duties imposed upon the board of supervisors, of examining the assessment-rolls and equalizing the valuations of the real estates in the different tax districts cannot be delegated, but must be performed by the board as such.

Bellinger v. Gray, 51 N. Y. 610.

In equalizing assessments no allowance can be made for omissions of taxable persons or property from the roll by assessors.

People v. Hadley, 1 Abb. N. C. 441.

They are simply to equalize valuations as between the several tax districts in the county and are confined to real property values only.

People v. Hadley, 76 N. Y. 337.

“Prices obtained upon public sales are, for obvious reasons, considered some proof of the value of the property sold, and are receivable as evidence upon the questions of value.”

The valuation of property is necessarily a matter of opinion among men, and

Appeals.

must, under all circumstances, be finally determined by the judgment of individuals, and the scheme of the statute seems to be to leave its decision to the officers selected for that purpose, and to make their determination conclusive evidence of such value, for the purposes of taxation.

Except for the provision of the statute authorizing parties whose property is assessed, to appear before the town, ward or city assessors, and make affidavit as to the circumstances and value of property assessed to them respectively, no provision is made for the hearing of such parties, by any of the administrative bodies engaged in perfecting the valuation of taxable property, and it is to be implied by irresistible inference, therefore, that the law contemplates that such bodies shall proceed in the performance of their duties, upon their own knowledge, information and judgment, and so far as they may be deficient therein that they will, in their own way, inform themselves of such facts, as it may be necessary to know, in order to discharge their duties intelligently.

People v. McCarthy, 102 N. Y. 643.

§ 66. **Appeals to the State board of tax commissioners from equalization by board of supervisors.**—Any supervisor may appeal in behalf of the town, city or ward which he wholly or in part represents, to the State board of tax commissioners, from any act or decision of the board of supervisors, in the equalization of assessments and the correction of the assessment-rolls. If such appeal is brought in behalf of a town, a majority of the town board of such town, if in behalf of a city, a majority of the supervisors representing such city, or if the assessment in the wards of any city are equalized separately and such wards have separate assessment-rolls, then the alderman and aldermen representing such ward in the common council of the city shall first consent to and approve of the bringing of such appeal. Such appeal shall be brought within ten days after the delivery of the assessment-roll to the collector by filing in the office of the county clerk a notice thereof, with such consent indorsed thereon or annexed thereto, together with the affidavit of the supervisor so appealing, that in his opinion injustice has been done to such town, city or ward by the act or decision from which the appeal is taken; and also within such time, by serving personally or by mail, a duplicate or copy of such notice, consent and affidavit on the chairman or clerk of the board of supervisors, and by mailing such a copy or duplicate to the State board of tax commissioners.

Tax law, § 174, 3 R. S. 3132.

Under the petition of the relator, as supervisor of the town of Ontario, alleging that the defendant, the board of supervisors of the county of Wayne, has adopted an erroneous method in equalizing the assessments made by the assessors of the several towns of the county, and that the result was prejudicial to his town, a writ of certiorari was issued to review the proceedings of the board.

Held, that the writ should be quashed, as the relator might have appealed from the equalization, in behalf of his town, to the state assessors, and upon

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such appeal have obtained a decision whether or not injustice had been done to the town, and if there had been, have had the requisite correction made.

That the provision of section 2122 of the Code of Civil Procedure, declaring that, except as otherwise expressly prescribed by statute, a writ of certiorari cannot be issued "where the determination can be adequately reviewed by an appeal to a court, or to some other body or officer," did not violate the provision of the Constitution (art. 6, § 6), that "there shall be the existing Supreme Court with general jurisdiction in law and equity," nor deprive the relator of any right which he had to prosecute his remedy by "the law of the land," but simply denied to him the right to demand the exercise of the discretion of the court in issuing a writ of certiorari on his application when he had an adequate remedy by appeal.

It appeared that the equalization sought to be reviewed was produced by the adoption and use of a table of decimals, one for each town, which represented the percentage of the aggregate assessed valuations with which the towns, respectively, were charged in the equalization as made, and that, in their application and use by the defendant of those factors, the assessed valuations of the personal as well as of the real estate were included, by which means the valuations, in the respective towns, of the personal property, as they appeared in the assessment-rolls, were modified, and for some of the towns increased and for others diminished, but the aggregate valuations of the real and personal estate of all the towns remained the same as that of the assessed valuations.

Held, that this method was clearly irregular and erroneous for the reason that the board of supervisors, in making the equalization, lawfully had nothing to do with the assessed valuations of personal property other than to continue them, as made by the assessors of the respective towns.

That while the equalization rests wholly in the judgment of the board of supervisors, and the results must depend upon the action of a majority, when all the members do not concur, the error in the manner of doing it is not simply one of judgment, where the proceeding is in evident violation of the statute, as was that under consideration; nor was it justified by the recognized use of that method in the county of Wayne for several years preceding that in question; nor is the principle of estoppel applicable to the action in that respect of any supervisor as the representative of his town.

People ex rel. Hill v. Supervisors, 49 Hun, 476.

§ 67. **Appeals, how conducted.**—The board of tax commissioners may prepare a form of petition and notice of appeal from decisions of the board of supervisors in the equalization of assessment and rules and regulations in relation to bringing such appeals to a hearing or trial thereof. Such rules shall provide for a hearing on the papers and proofs submitted to the board of supervisors on making the equalization, in case the party so desires, and also, in case the notice of appeal so specifies, for the taking of additional evidence offered by either party. The appeal shall be heard in the county in which it originated. In either case such hearing shall be had at a time and place to be fixed by the board upon notice of at least twenty days by mail to the party appealing and to the clerk of the board of supervisors of the county in which the appeal is taken. If the appellant or his successor fails to appear at the time and place appointed or upon any day to which such hearing and trial shall be adjourned, the board shall make an or-

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der dismissing the appeal, which shall have the same effect as if the appeal had not been sustained after a hearing on the merits.

Tax Law, § 175; 3 R. S. 3132.

The following decisions were under the old law and are now applicable, using the term "tax district," instead of "ward" where a whole city is a tax district.

The state assessors are authorized and it is their duty, upon appeal by a town, to determine:

1. Whether the town appealing has suffered injustice as compared with other towns in the county.

2. Whether such town shall have a deduction from its valuation and the amount thereof.

3. Upon what other town or towns such deductions shall be placed and the portion thereof which shall be placed on each.

The comparison is not between the town appealing and the residue of the county as an entirety, but between it and the other towns as distinct and separate organizations. For the purpose of performing this duty it is essential that said assessors shall take into consideration the valuation of all the towns in the county separately, and if they find injustice has been done to the appealing town by an excessive valuation as compared with some of the towns, they may remedy it by thus placing the excess upon those towns; and this although other towns which have not appealed have suffered a like injustice; for the purpose of correcting the injustice complained of these towns cannot be regarded. Nor is it an available objection where the decision of the state assessors was forwarded by mail in due season, that it was not filed with the clerk of the board of supervisors before the beginning of the next annual meeting. The state assessors are not required upon such an appeal to take testimony as to the amount and value of the personal property in the towns. As a board of supervisors in making equalization are confined to the valuation of real estate, the state assessors have no authority beyond this. When such decision was certified and forwarded by mail to the board of supervisors, within ten days after it was made and signed by the state assessors, but not until after the commencement of the next annual session, and the board omitted to carry the decision into effect, held, that a mandamus would lie to compel the execution of such decision.

People ex rel. Robinson v. Bd. of Suprs. of Ontario Co., 85 N. Y. 323.

§ 68. **Determination of appeals.**—On every such hearing or trial, the board of tax commissioners shall determine whether any, and if any, what deductions ought to be made from the aggregate corrected value of the real and personal property of such tax district as made, and to what tax district or districts in such county the amount of such deductions, if any, shall be added; and shall certify their determination, in writing, to such board of supervisors and forward the same by mail within ten days thereafter to the clerk of the board, directed to him at his post-office address, and forward a copy thereof to the supervisor appealing. Such determination shall be carried into effect by such board at its next annual session.

Tax Law, § 176; 3 R. S. 3133.

§ 69. **Costs on appeal.**—The board of tax commissioners shall certify the reasonable expense on every such appeal, not ex-

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ceeding the sum of two thousand dollars for services of counsel and one thousand dollars for all other expenses, including the compensation and expense of the stenographer. If such appeal is not sustained, the costs and expenses thereof so certified shall be a charge upon the tax district or districts taking such appeal and shall be levied thereon by the board of supervisors. If the appeal is sustained, the amount of such costs and expenses so certified shall be levied by the board of supervisors upon, and collected from, the county in the assessment and collection of taxes for the current year, except the tax district or tax districts whose appeal is sustained. If there shall be appeals by more than one tax district in the county, some of which are not sustained and some dismissed, the State board shall decide what portion of such costs and expenses shall be borne by any tax district whose appeal is dismissed.

Tax Law, § 177.

§ 70. **Procedure on appeal.**—The following are the forms prescribed by the State board:

RULES AND REGULATIONS OF THE STATE BOARD OF TAX COMMISSIONERS.

Pursuant to the provisions of section 175 of chapter 908 of the Laws of 1896, the state board of tax commissioners make and declare the following rules and regulations relative to the bringing and hearing of appeals to said board from the decisions of boards of supervisors, viz.:

First. The notice of appeal and affidavit thereto shall be substantially in one of the following forms, which ever may be applicable, under the provisions of section 174, chapter 908, Laws of 1896:

To the Board of Supervisors of the County of

Gentlemen.—Take notice that, as supervisor of the of, I hereby appeal to the state board of tax commissioners of the State of New York, in behalf of said from the act or decision of the board of supervisors of said county of in the equalization of assessments and correction of the assessment-rolls of said county, as made on the day of, A. D., 190.. On the hearing of this appeal (evidence in addition to the papers and proofs submitted to the board of supervisors on making the equalization, may be offered by either party). If the appellant so desires, strike out the words within the parenthesis above and substitute the following: (The evidence will be confined to the papers and proofs submitted to the board of supervisors on making the equalization.)

Dated,, A. D., 190..

.....
Supervisor of the.....
of

[AFFIDAVIT.]

STATE OF NEW YORK, { ss.:
..... County, }

....., being duly sworn, deposes and says, he is the supervisor of the of and in his opinion

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injustice has been done to said by the act or decision of the board of supervisors of the county of in the equalization of assessments and the correction of the assessment-rolls of said county, as made on the day of, A. D., 190..

Subscribed and sworn to before me, this day of, A. D., 190..

(CONSENT TO BRINGING APPEAL.)

To the Board of Supervisors of the County of: Gentlemen.—Take notice that we, supervisor of the (town or ward as the case may be) of and (here insert names and official title of majority of the town board or the name or names of the alderman or aldermen of the ward, as the case may be) who together constitute a majority of the town board of the said town or (being the supervisor and aldermen of the said ward of said city) of, do hereby consent to and approve of the bringing of an appeal to the state board of tax commissioners of the State of New York on behalf of said of from the act or decision of the board of supervisors of the county of in the equalization of assessments and correction of the assessment-rolls of said county, as made on the day of, A. D., 190..

(NOTICE OF APPEAL ON BEHALF OF A CITY.)

To the Board of Supervisors of the County of: Gentlemen.—Take notice that we, as supervisor of the ward of the city of as supervisor of the ward of said city; as supervisor of the ward of said city; as supervisor of the ward of said city; who together constitute a majority of the supervisors representing said city; do hereby severally appeal to the state board of tax commissioners of the State of New York, from the act or decision of the board of supervisors of the county of in the equalization of assessments and correction of the assessment-rolls of said county, as made on the day of, A. D., 190.. On the hearing of this appeal (evidence in addition to the papers and proofs submitted to the board of supervisors on making the equalization, may be offered by either party). If the appellant so desires, strike out the words within the brackets above and substitute the following: (The evidence will be confined to the papers and proofs submitted to the board of supervisors on making the equalization.)

STATE OF NEW YORK, } ss.:
County of..... }
.....being each duly and severally sworn, doth each for himself depose and say; the said that he is the supervisor of the ward of said city of; the said that he is supervisor of the ward of said city; the said that he is supervisor of the ward of said city;

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the said that he is supervisor of the ward of said city; and the said doth each for himself further depose and say, that he, with his coaffiants, are a majority of the supervisors representing the city of; that in his opinion injustice has been done the city of by the act or decision of the board of supervisors of the county of in the equalization of assessments and correction of the assessment-rolls of said county, as made on the day of, A. D., 190.., and he consents to, and approves of, the bringing of an appeal therefrom on behalf of said city.

.....

Subscribed and sworn to before me, this }
 day of, A. D., 190.. }

.....

Second. On the hearing, the appellant shall be deemed to have the affirmative, and the action of the board of supervisors shall be regarded *prima facie* as correct, until such presumption is overcome by evidence establishing the allegation of injustice done to the appealing town, ward or city.

Third. The board of supervisors shall be deemed the respondent.

Fourth. The appeal may be heard on the papers and proofs submitted to the board of supervisors on making the equalization, in case the appellant so desires; or additional evidence may be offered by either party in case the notice of appeal so specifies; in the latter case, in order to establish the allegation of injustice and erroneous equalization the appellant must show by evidence, oral, documentary (or by depositions when said board so directs) the full and true value of sufficient property in each town, ward or city of said county, to determine the full and true value of the property of said town, ward or city with reasonable accuracy.

Fifth. The state board of tax commissioners will require the production of all the assessment-rolls, on which the board of supervisors made the equalization appealed from, and such rolls will be regarded as a part of the evidence in the case.

Sixth. The appellant will be required to present a correct statement of the railroads in each of the towns and cities of the county. Such statement must contain the name of the railroad, miles of roadbed, and width of the same, number of continuous tracks, and length of switches or side-tracks, real estate, if any outside of roadbed, and the estimated full value of all buildings, as depots, workshops, roundhouses, water-tanks, etc. This requirement may be waived in the discretion of the board of tax commissioners.

Seventh. The appellant will also be required to present at such hearing the area in acres and assessment (for purpose of county and state taxation) of each incorporated village in the county. This will not be required in counties where assessors have made separate assessments for farm and village property.

Eighth. The appeal will be heard at the time and place appointed, unless sufficient cause shall then and there be shown by affidavit, why an adjournment should be granted.

Ninth. After due notice of the time and place for the hearing of said appeal shall be given by the board of tax commissioners to the party appealing, and to the clerk of the board of supervisors of the county in which the appeal is taken, it shall be the duty of the clerk, receiving such notice, to immediately serve a copy of the same on each of the supervisors of said county, personally or by mail.

Tenth. The state board of tax commissioners will require a detailed and itemized statement of all expenses claimed by the respective parties, verified by affidavit, proving the amount of such disbursements and charges, and showing the necessity thereof before said board will proceed to certify the

Tax by supervisors.

reasonable costs and expenses arising from and connected with said appeal as prescribed by section 177 of chapter 908 of the Laws of 1896.

Eleventh. When more than one appeal shall be pending in a county, brought by different supervisors, on behalf of different towns, wards or cities, said appeals shall all be heard at the same time and together.

Twelfth. Not more than one counsel will be heard on either side, on the final argument of the matter, unless for special reason then shown.

Thirteenth. Subpœnas will be furnished on request, by the tax commissioners to either party.

§ 71. Levy of tax by supervisors.—The board of supervisors of each county shall, at its annual meeting, levy the taxes for the county, including the State tax, upon the valuations as equalized by it, and estimate and set down in a separate column in the assessment-roll of each tax district therein, opposite to the sums set down as the valuation of real and personal property or property of incorporated companies or of the taxable rents reserved, the sum to be paid as a tax thereon, including the State tax, as fixed by the comptroller. Such assessment-roll shall, when the warrant is annexed thereto, become the tax-roll of the tax district, and a copy thereof shall be delivered to the proper supervisor, who shall deliver it to the clerk of the proper city or town to be kept by him for its use.

Tax Law, § 55; 3 R. S. 3107.

The board is required to compute and enter in the roll, in a column opposite the valuation of real and personal estate, the amount of tax levied thereon; this must be done under the supervision of the board and before the roll can be certified to as completed.

People v. Hagadorn, 104 N. Y. 516.

The board of supervisors cannot amend the roll of any town, after they have finally acted on it and issued their warrant to the collector.

People v. Supervisors, 15 Barb. 607; *People v. Supervisors Queens Co.*, 82 N. Y. 275.

The assessment-roll must be completed before the warrant is annexed thereto.

Bellinger v. Gray, 51 N. Y. 610.

If supervisors fix the rate of tax upon the aggregate amount of valuation and without extending the tax, sign the roll and attach collector's warrant thereto and deliver it to the supervisor of the town with authority to him to compute and enter the amount of the tax which he does, and then delivers the roll to the collector, the roll and warrant are fatally defective and void.

People v. Hagadorn, 104 N. Y. 516; *Nehasne Pk. v. Lloyd*, 167 N. Y. 436 and 437; *Poth v. Mayor*, 151 N. Y. 16.

The clerical work of extending the tax may be done by a committee, the individual supervisors, the clerk or any person designated, but the ratification and confirmation must be done by the board, upon a call of towns the supervisor gives the result of the roll for his town, and when all towns have thus been reported the adoption of a resolution in substantially the following form will make the execution official:

Resolved, That the taxes as extended upon the assessment-rolls of the sev-

Form of roll.

eral tax districts, presented to the board by the supervisor thereof, be and the same are hereby confirmed, and that warrants be issued to the collectors of such tax districts for the collection of the same.

Methodist Episcopal Church v. Mayor, 20 Hun, 297-298; Bellinger v. Gray, 51 N. Y. 610-621; People v. Lohnas, 54 Hun, 604; People v. Hagadorn, 104 N. Y. 516.

§ 72. Form of assessment-roll, with tax extended.—

A railroad corporation owning real estate is a “resident” of the town or tax district wherein its road is situated, and taxed and assessed in the same manner as an individual, as follows, and some suggestions to assessors as used in minor courts:

ASSESSMENT-ROLL OF THE TOWN OF
LANDS OF RESIDENTS.
FOR THE YEAR 190

Names of all taxable inhabitants in the tax district.	Quantity of taxable land taxed in acres.	Full value of taxable land in dollars.	Full value of all taxable personal property taxed in dollars.	Full value of taxable rents reserved.	Amount of tax in dollars and cents.	Dog tax in cents.	Remarks.
	100						
					
	200						
	10						
					
	Tunnels, tracks, superstructure, road-bed, and masonry.	100,000 00	450,000 00		5,000 00	
	
Footings	

* See People ex rel. N. Y. & H. R. R. v. Com'rs, 101 N. Y. 322.

Form of roll.

ASSESSMENT -ROLL OF THE TOWN OF, COUNTY OF,
 FOR THE YEAR 190..
 LANDS OF NONRESIDENTS.

Name of tract, patent, etc., and description of part.	No. of lot.	No. of Acres.	Full Value.	Amount of tax.
GREAT LOT No. 3, 5th Allotment, Division 3, Division 6. Rejected 1888.				

TO THE TOWN ASSESSORS.

To the end that there may be uniformity in the town assessment rolls, when completed, the board of supervisors of Monroe county, in annual session convened, passed the following resolutions, instructing the town assessors to comply with certain forms as here set forth:

Plain Figures — Make all figures PLAIN and DISTINCT.

Ditto Marks — Do not make ditto marks in the columns for figures.

Figures — See that the figures are placed under each other, inside the blue lines and not zig-zag.

Acreage — Do not omit any acreages however small, and be sure and report the railroad acreage.

Valuation per Acre — In the column designated "value per acre," place the valuation as fixed by you; this is indispensable.

Affidavit — The assessor's affidavit should immediately follow that portion of the roll made by them, viz.: After the recapitulation.

Fractions — Reduce all fractions of an acre to 100ths, thus $75\frac{3}{4}$ acres, report 75.75, 50 1-3 acres, 50.33; placing the 100ths in the column designated for the purpose.

Description — The attention of the assessors is called to the necessity of placing in the roll a correct description of the property, particularly the number of lots or parts of lots.

Railroad Property — In entering Railroad, Telegraph and Telephone property in the assessment roll, place each corporation on separate pages, alphabetizing Railroads under R in the index, and Telegraph and Telephone under T in the index.

Assessing Lots — In assessing lots, owned by one person, assess each separately. Do not assess several lots to one name, as in case any of the lots are sold, it makes it impossible for the county treasurer to give a receipt.

Completion of Roll — The assessors shall complete the assessment roll on or before the first day of August, and notices must be posted in three or more public places; on the third Tuesday of August they must meet to review their assessments.

Proper Heading — Railroad and Telegraph property should be placed under the column marked "assessed value of real estate," not under the column marked "value of personal estate," unless "special franchise," when it should go under that heading.

Form of roll.

Assessing Railroad Property — In assessing railroads give miles and 100ths of miles of track in town, with value; also acres of land, with value of land and buildings; do not assess it all in one lump as N. Y. C. R. R. \$100,000, and do not put it on a page with any other property.

Map of Non-Resident Property — If the assessors shall deem it necessary to have an actual survey made, to ascertain the quantity of any lot or tract of non-resident real property, they shall notify the supervisor, who shall cause the necessary surveys to be made at the expense of the town.

Column for Fire Tax — In the assessment rolls a column has been placed for "fire tax." This column will contain the tax on fire districts; assessors can note immediately after property that is liable for fire tax in red ink, the initials "F. T.," which will indicate the property is liable to fire tax.

Making Two Copies of Assessment Rolls — When the assessment roll is completed and verified the assessors shall make two copies thereof, one of which shall be retained by them for the use of themselves and their successors in office, and the other of which, duly certified by the assessors to be a copy, shall be filed in the office of the town clerk, on or before the 15th day of September.

Filing of Roll — On or before the 15th day of September a copy shall be filed in the office of the town clerk, which shall become a public record. The assessors shall cause to be posted notices in at least three public places and to be published in one or more newspapers, if any, published in the town, that such assessment has been finally completed and that such certified copy has been so filed. The said original assessment roll shall be delivered to the supervisor on or before October 1st.

Village Property — Place incorporated village property on the rolls *separate from farm property and make a recapitulation of both, viz.:* a recapitulation of the village property immediately after the pages that the property appears on; then commence with the farm property and make a recapitulation of that. On the next page make the grand total, showing the total valuation in the town, of both village and farm property. In several of the rolls last year the recapitulation was strung out for several pages. This is not necessary, and only tends to confuse.

Apportionment of R. R. in School Districts — The practice of the assessors making the apportionment for school districts in the assessment roll is wrong; under the law the assessors shall make such apportionment, to be signed by a majority within fifteen days after the final completion of the roll, and said apportionment must be filed with the town clerk within five days thereafter. The town clerk shall furnish the trustees a certified copy of such apportionments. A decision on this point held the method of making the apportionment in the assessment rolls to be illegal. *People v. Adams*, 125 N. Y. 471.

Personal — The terms "personal estate" and "personal property," as used in this chapter, includes chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within this state, however secured or wherever such securities shall be held; debts due by inhabitants of this state to persons not residing within the United States for the purpose of any real estate, public stocks, stocks in moneyed corporations, and such portion of the capital, as shall not be invested in real estate. (Sec. 4, Chap. 808, Laws of 1896.)

Order of Assessing — The practice of alphabetizing the names in the assessment roll is unnecessary, as the index in the front portion of the book is there for that purpose. Place the names in the assessment roll exactly the way you find the property when you assess along a road or street. If you find Brown, Smith, Jones, Robinson, etc., living on one road, place their names in the roll in that order, and it would facilitate the making of tax searches, if the assessors would head the page by stating the name of the tract, road or street

Form of roll.

on which the property is found. In all cases except Railroads, Telegraph and Telephones, fill out the page.

Recapitulation — Place all the village property in the book first, regardless of the alphabetical arrangement of names, and then make a recapitulation. Then enter the farm property and make a recapitulation of that. On the following page place the two recapitulations, adding them together, which will give the total valuation of the town.

The Railroads, Telegraph and Telephone companies valuations should be divided between the village and town. In case property has been omitted the previous year, and is placed in the assessment roll to be re-assessed, place it on a separate page after the recapitulation, and write at the head of the page "To be re-assessed." Do not add the amount to be re-assessed in the total.

Footing Assessment Rolls — According to the law the ASSESSORS MUST FOOT THE ASSESSMENT ROLLS before delivering them to the supervisors. The assessors of the towns will understand the GREAT IMPORTANCE of adding the columns correctly; an error in acreage, personal or real, however small, may work great injury to your particular town. In making the recapitulation in the back of the book carry over the footings of the page like this:

	No. of Acres.	Assessed value of real estate in dollars.	Value of Per- sonal Property.	Sex.	
				Dog.	Slut.
Page 1	145.75	\$ 24,785	\$ 2,000	4	1
" 2	377.50	52,591	12,000	15	1
" 3	376.18	37,747	27,450	20	2
Total	899.43	\$115,133	\$41,450	39	4

Uneven Amounts — The attention of the assessors is called to the common practice of making the valuation in odd amounts. As, for instance, John Doe has 57 acres of land at \$87 per acre, which would make the assessment \$4,959. As these uneven amounts are hard to handle for the town officers, school trustees, and all persons having taxes to extend on the property. it is suggested the assessors in the towns follow the practice of the large majority of the assessors, and where a multiplication brings amounts of this character, either reduce or add to them to bring 50 or 100. In the above amount of \$4,959, it would be called \$4,950; if the amount was \$4,996, it would be called \$5,000. In other words, if the result is 49 or less, call it even hundred; if more than 49 and less than 76, it should be called 50; if 76 and less than 99, call it a hundred in the next hundred, etc.

Exempt Property — All exempt property, as schools, churches, city, state and property purchased with pension money, must be placed in the assessment roll in the same manner as other property, and in the same order that it is found along a street or road; if the property is entirely exempt, the word "free" should be written in the column under "assessed value of real estate;" if the property is exempt on account of pension, or any portion of it, the total amount of valuation should be placed on the left hand page and amount of exemption deducted, and the balance, if any, placed under proper heading. Property purchased with pension money is liable for local school taxes and maintenance of streets and highways. Make the entry as follows, on the left hand page:

Tax roll and collector's warrant.

Valuation\$5,000
 Exempt 3,000

Assessed Valuation of Real Estate
 \$2,000.

If the assessors fail to comply with the above instructions, the supervisor is hereby authorized to return the rolls to the assessors for correction.

§ 73. **Tax-roll and collector's warrant.**—On or before December fifteenth, in each year, the board of supervisors shall annex to the tax-roll a warrant under the seal of the county, signed by the chairman and clerk of the board, commanding the collector of each tax district, to whom the same is directed, to collect from the several persons named in said roll the several sums mentioned in the last column thereof opposite their respective names, except taxes upon the shares of stock of banks and banking associations, on or before the first day of the following February, and further commanding him to pay over on or before that date, all moneys so collected, appearing on said roll, to the treasurer of the county, if he be a collector of a city or a division thereof, or if he be a collector of a town:

1. To the commissioners of highways of the town, such sum as shall have been raised for the support of highways and bridges therein.

2. To the overseers of the poor of the town, such sum as shall have been levied, to be expended by such overseers for the support of the poor therein.

3. To the supervisor of the town, all of the moneys levied therein, to defray any other town expenses or charges.

4. To the treasurer of the county, the residue of the money so to be collected.

If the law shall direct the taxes levied for any local or special purpose in a city or town, to be paid to any person or officer other than those named in this section, the warrant shall be varied so as to conform to such direction. The warrant shall authorize the collector to levy such taxes by distress and sale, in case of non-payment. The corrected assessment-roll, or a fair copy thereof, shall be delivered by the board of supervisors to the collector of the tax district on or before December fifteenth, in each year.

Tax Law, § 56, as am'd by Laws 1901, chap. 550, § 3.

It seems that officers imposing tax may ascertain amount required to be paid to county treasurer and held by him as a sinking fund for redemption of railroad aid bonds and specify same in the warrant; if they do not do so the collector may deduct for school and road taxes and pay balance to county treasurer.

Matter of Clark v. Sheldon, 106 N. Y. 104; People v. Brown, 55 N. Y. 180.

Validation of warrants.

If towns are so bonded the moneys collected for such purposes must be so used, and the authorities have no right to divert or appropriate such taxes for any other purpose.

Bridges v. Supr., 92 N. Y. 570.

Moneys for the poor and highway purposes should be paid over to the proper officer, not to the supervisor. The warrant should so direct.

People v. Pennock, 60 N. Y. 421.

Although a warrant may have been issued erroneously or irregularly, if on its face it gives authority to the officer to collect the tax, replevin cannot be sustained for property taken by virtue of the warrant.

Troy & L. R. R. v. Kane, 72 N. Y. 614; *L. S. & M. S. R. R. Co. v. Roach*, 80 N. Y. 339.

A delay in delivery of warrant to collector until after December 15th does not invalidate the warrant, neither is it invalidated because no affidavit is attached to the copy of the roll delivered to him. The collector is protected and has a right to assume that a proper affidavit was attached to the original roll.

Bradley v. Ward, 58 N. Y. 401.

An omission of the dollar mark in the statement in a tax roll and warrant of the amount of a tax does not invalidate the assessment tax roll or warrant, such mark should however appear.

American Tool Co. v. Smith, 96 N. Y. 670; *Ensign et al. v. Barse et al.*, 107 N. Y. 329, 338.

The official designation of the one so signing the warrant should be added.

Sheldon v. Van Buskirk, 2 N. Y. 473.

§ 74. **Validation of certain warrants.**—The acts of the boards of supervisors of the several counties of this State, in annual session for the year eighteen hundred and ninety-six, in issuing warrants for the collection of taxes, to the collectors of the several towns or tax districts thereof, so far as such acts may be affected, questioned or impaired by reason of such warrants having been issued to such collectors under the hands and seals of the individual members of said boards of supervisors respectively, or a majority thereof, are hereby legalized ratified and confirmed, and made as effectual and valid, as if such warrants had been issued under the seal of the county and signed by the chairman and clerk of said several boards of supervisors, as required by the “tax law” of this State.

Laws 1897, Chap. 4.

CHAPTER FOUR.

COLLECTOR.

- §75. Collector's warrant.

§76. Collector's undertaking.

§77. Notice by collector.

§78. Notice to nonresidents.

§79. Collection of taxes.

§80. Where collector neglects to qualify.

§81. When collector refuses to serve.

§82. Collection of unpaid taxes, etc.

§83. Return of warrant.

§84. Return by collector of unpaid taxes.

§85. Return when collector has been enjoined.

§86. Payment of money collected.

§87. Extension of time for collection.

§88. County law time for collection.

§89. Payment of state tax.

§90. Accounts; county treasurer.

§91. Losses by default of collector and treasurer.

§ 92. Receipts for taxes.

§ 93. Articles, how applicable.
- § 94. Power of county court fails to pay over.

§ 95. Payment of moneys collected.

§ 96. Collection of deficiency.

§ 97. Settlement of claims.

§ 98. Taxes overcharged.

§ 99. Refund of taxes.

§100. Maps to be furnished comptroller.

§101. Purchases by comptroller.

§102. Comptroller's deed and application therefor.

§103. Expense of publication.

§104. Cancellation of sales.

§105. When lands to be sold by county treasurer for unpaid taxes.

§106. Advertisement and sale.

§107. Conveyance by county treasurer.

§108. When purchase money to be refunded.

§109. Fees.

§ 75. Collector's warrant.

STATE OF NEW YORK, } ss.
COUNTY OF MONROE.

To.....
Collector of the town of.....in said County:

YOU ARE HEREBY COMMANDED to collect from the several persons named in the ASSESSMENT ROLL hereunto annexed, the several sums mentioned in the last column in each page thereof, opposite to their respective names; and you are hereby authorized, in case any of them shall refuse or neglect to pay such sum or sums to levy the same by distress and sale of his or her goods and chattels.

And you are hereby directed and required out of the moneys so to be collected to pay:

To the Commissioner of Highways of the said Town, the sum of.....
.....
..... dollars andcents.

To the Overseer of the Poor of the said Town, the sum of.....
.....
..... dollars andcents.

To the Supervisor of the said Town, the sum of.....
.....
..... dollars andcents.

Warrant.

To the Treasurer of the said County,.....
..... dollars and cents,
the residue of the said moneys so to be collected (exclusive of Dog Taxes).

AND YOU ARE FURTHER COMMANDED to collect (in the same manner as the said other taxes are directed to be collected) from the several persons named in the said roll as owning or harboring any dog or bitch, the sum set opposite their respective names, and to pay the same to the Supervisor of the said Town, first retaining therefrom a commission of ten per cent. upon all sums so collected by you, for Dog Taxes, for your fees.

And you are required to make all the payments hereinbefore specified on or before the first day of February next ensuing the date thereof. And for so doing this shall be your warrant.

WITNESS the hands and seals of the BOARD OF SUPERVISORS OF THE COUNTY OF MONROE, or a majority of them, at the City of Rochester, this day of December, in the year of our Lord, one thousand eight hundred and ninety.....

.....
..... L. S. L. S.
..... L. S. L. S.

Highway Commissioner,	\$								
do. do. del. Highway Tax,	\$								
do. do. Scraper Tax,	\$								
	\$								
Overseer of the Poor,	\$								
Supervisor,	\$								
do. Dog Tax,	\$								
	\$								
County Treasurer,	\$								
	\$								
Total,	\$								

SECTIONS 29 AND 30, OF CHAPTER 180, OF LAWS OF 1845.
(As amended by Chap. 96, 1876.)

§ 29. Whenever any Town Collector shall have received any warrant for the collection of taxes, he shall immediately thereafter cause notices of the reception thereof to be posted up in five public places in the ward or town, and so located as will be most likely to give notice to the inhabitants thereof, and shall designate in such notices, one or more convenient places in such town, where he will attend from nine o'clock, forenoon, till four o'clock, afternoon, at least three days in each week, for thirty days, which days shall also be specified in such notice, for the purpose of receiving payment of taxes; and it shall be the duty of such Collector to attend accordingly, and any person may pay his taxes to such Collector at the time and place so designated, or at any other time or place, on paying one per cent. fees thereon within thirty days from the first posting of said notices; and no collector shall receive over one per cent. fees for receiving or collecting any taxes within said thirty days. But every such Collector shall be entitled to receive one cent fees on every amount of tax under one dollar paid in or collected within said thirty days, except in cases where it is now otherwise provided by law.

§ 30. It shall be the duty of the Collector, after the expiration of the said

Town collector's undertaking.

thirty days. to proceed and collect the unpaid taxes in the same manner, and shall pay over or account to the County Treasurer, and shall be entitled to charge, collect and receive the same fees as now provided by law; which said fees shall be collected with such unpaid taxes from the several and respective persons named in said tax list.

Additional Fees of Collectors. — Town Collectors shall be entitled to collect five per cent. fees for all unpaid taxes under the thirtieth section of the act hereby amended, and whenever such Collector shall make return to the County Treasurer for any unpaid taxes, he shall add to the several sums so returned by him, five per-cent., which shall go to the credit of the county, and be collected with said unpaid taxes; and such Collector shall be entitled to receive from the County Treasury, and be paid by the Treasurer, two per cent. as fees for all taxes so returned by him.

L. 1847, ch. 455, sec. 16, as amended L. 1875, ch. 474, sec. 1.

DOGS.

Laws of 1892, § 113, ch. 686, * * * * * and if any person duly assessed, shall refuse or neglect to pay the tax so assessed, within five days after demand thereof, it shall be lawful for any person, and it shall be THE DUTY of the Collector to kill the dog so taxed.

Laws of 1892, § 115, ch. 686. Each Collector shall be allowed to retain a commission of ten dollars on every hundred dollars collected, and at that rate upon all sums collected by him pursuant to this article, and upon filing his affidavit of the fact with the Supervisor, be entitled to retain, as a further compensation from the moneys collected by him, the sum of one dollar for every dog or bitch killed by him under the provisions of this article.

§ 76. Town collector's undertaking.—

Know all Men by these Presents, That I, collector of the town of, in the county of Monroe, State of New York. as principal, and.....
.....
.....
.....
.....

of the said town, county and state, as sureties, are held and firmly bound unto the town of, in said County of Monroe, in the sum of dollars, [1] for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed, sealed and delivered this day of, 190..

Whereas, The said was on the day of, 19.., duly elected collector of the said town of, and is about to enter upon the discharge of his duties and to receive the assessment roll of said town for the year 19.., calling for the collection of dollars.

Now Therefore, The condition of the foregoing undertaking is such, that the above named shall well and faithfully execute his duties, as such collector, and pay over all moneys received by him and account in the manner and within the time prescribed by law for all taxes upon the assessment-roll of his town, delivered to him for the ensuing year, and shall pay over all moneys or property received by him as such collector, in accordance with law, and in default thereof, that we, the undersigned sureties, will pay all damages, costs and expenses resulting from such default not exceeding the sum of dollars.

In Testimony Whereof, The said collector, as principal, and the said

Notice of receipt of roll.

sureties above named, have hereunto set their hands and seals the day and year first above written.

.....L. S.
Principal.
.....L. S.
Surety.
.....L. S.
Surety.
.....L. S.
Surety.
.....L. S.
Surety.
.....L. S.
Surety.
.....L. S.
Surety.

STATE OF NEW YORK, }
COUNTY OF MONROE, } ss.:
TOWN OF..... }
On this day of, 19.. before me personally appeared,
.....
.....
.....
.....
to me known to be the individuals described in and who executed the fore-
going instrument and they severally duly acknowledged to me that they
executed the same.
.....
.....

§ 77. Notice by collector of receipt of assessment roll and warrant.—

Notice is hereby given that I, the undersigned, collector of taxes in and for the town of, County of Monroe, have received tax-roll and warrant for the collection of taxes for the present year, and that I will attend at, in said town.....
.....
.....
in each week, for thirty days from the date hereof, from 9 o'clock in the forenoon until 4 o'clock in the afternoon, for the purpose of receiving the taxes assessed upon such roll.
Dated this day of, 19..
.....
Collector.
Town of, County of Monroe.

§ 78. Notice to non-residents.—A person who is the owner of, or liable to assessment for, an interest in real property situated and liable to assessment and taxation in a town in which he is not-actually a resident may file with the town clerk of such town a notice stating his name, residence and post-office address, a

Collection of taxes.

description of the premises sufficient to identify the same, and if situated in a village or school district, the name of such village and number and designation of such school district. The town clerk shall, within five days after the delivery of the warrants for the collection of taxes in such tax districts, furnish to the collectors of the town, and the collector of each village and school district in which such real property is situated, and such collectors shall within such time apply for, a transcript of all notices so filed, and such collectors shall within five days after the receipt of such transcripts mail to each person filing such notice, at the post-office address stated therein, a statement of the amount of taxes due on said property. Upon the filing of such notice the town clerk shall be entitled to receive a fee of one dollar from the person offering such notice, which shall be in full for all services rendered hereunder.

Tax Law, § 70a, added by Laws 1903, chap. 338.

§ 79. **Collection of taxes.**—After the expiration of such period of thirty days, the collector shall call, at least once, on every person taxed upon such roll, whose taxes are unpaid, at his usual place of residence, if he is an actual inhabitant of such tax district, and demand payment of the taxes charged to him on his property. If any person shall neglect or refuse to pay any tax imposed on him, the collector shall levy upon any personal property in the county belonging to or in the possession of any person who ought to pay the tax, and cause the same to be sold at public auction for the payment of such tax, and the fees and expenses of collection; and no claim of property to be made thereto by any other person shall be available to prevent such sale. Public notice of the time and place of sale of the property to be sold shall be given by posting the same in at least three public places in the tax district where the sale is to be made, at least six days previous thereto. If the proceeds of such sale shall be more than the amount of such tax, the fees of the collection and the expenses of the sale, the surplus shall be paid to the person against whom the tax was assessed. If any other person shall claim the surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for the payment of whose tax the sale was made, such surplus shall be paid to such other person. If such claim be contested by the person for the payment of whose tax the property was sold, such surplus shall be paid over

When sheriff shall act; unpaid taxes.

by the collector to the supervisor of the town, who shall retain the same until the rights of the parties thereto shall be determined by due course of law, or by agreement in writing made by them and filed with the supervisor. The collector upon payment of the taxes shall state in the column of the tax roll provided therefor, the date of such payment, and shall write his name after such date.

Tax Law, § 71, as am'd by Laws 1901, chap. 159; see also, §§ 535, ante, and 1316, post.

§ 80. **When collector neglects to qualify the sheriff shall act.**—If the collector of any tax district in the State shall neglect or refuse to execute an official bond or undertaking as required by law, or the supervisor of the town shall refuse or neglect to approve and file the same, within the time prescribed by law, and a new collector shall not have been appointed within ten days after the time when such bond or undertaking should have been filed, the board of supervisors shall deliver the tax-roll or a copy thereof with the warrant annexed, to the sheriff, who shall give a like undertaking as is required from the collector, and who shall then proceed with the collection of the taxes levied therein in like manner as collectors are authorized by law to do, and with like powers and subject to the same duties and obligations. Every such warrant shall require all payments therein specified to be made by the sheriff within sixty days after the receipt of the warrant by him. The expense of the collection of such taxes by him, if any, over and above the fees lawfully chargeable by the collector, shall be audited by the board of supervisors and shall be a charge upon the town.

Tax Law, § 87; 3 R. S. 3113.

§ 81. **When collector refuses to serve or disabled.**—The town board shall immediately appoint his successor, who shall give same undertaking, be subject to same duties and penalties, etc., as his predecessor.

Tax Law, § 86.

§ 82. **Collection of unpaid taxes on debts owing to nonresidents of the United States.**—If it shall appear by the return of any collector that any tax imposed upon a debt owing to a person residing out of the United States remains unpaid, the county treasurer shall, after the expiration of twenty days from such return, issue his warrant to the sheriff of any county in this State where

Return of warrant.

any debtor of any such nonresident creditor may reside, commanding him to make of the real and personal property of such nonresident the amount of such tax, to be specified in a schedule annexed to the warrant, with his fees and the sum of one dollar for the expense of issuing such warrant, and to return the warrant to the treasurer issuing the same, and to pay over to him the money which shall be collected by virtue thereof, except the sheriff's fees, by a day therein to be specified within sixty days from the date thereof. The taxes upon several debts owing to a nonresident shall be included in one warrant. The taxes upon several debts owing to different nonresidents may be included in the same warrant, and the sheriff shall be directed to levy the sum specified in the schedule annexed, upon the real and personal property of the nonresidents, respectively, opposite to whose names, respectively, such sums shall be written, with fifty cents for the expenses of the warrant. Such warrant shall be a lien upon and shall bind the real and personal property of the nonresidents against whom issued from the time an actual levy shall be made upon any property by virtue thereof, and the sheriff to whom the warrant shall be directed shall proceed upon the same, in all respects, with like effect, and in the same manner, as prescribed by law, in respect to execution against property issued upon judgment rendered in the supreme court, and shall be entitled to the same fees for his services in executing the same, to be collected in the same manner.

Tax Law, § 76; 3 R. S. 3110.

§ 83. **Return of warrant for collection of taxes on debts owing to nonresidents—Neglect to make return.**—If any sheriff shall neglect to return any such warrant as directed therein, or to pay over any money collected by him in pursuance thereof, he shall be proceeded against in the supreme court by attachment in the same manner, and with like effect, as for similar neglect in reference to an execution issued out of the supreme court in a similar action, and the proceedings therein shall be the same in all respects. If any such warrant shall be returned unsatisfied, wholly or partly, the county treasurer may obtain an order from a judge of the supreme court of the district, or a county judge of the county of such treasurer, issuing the warrant, requiring such nonresident or any person having property of such nonresident or indebted to him, to appear and answer concerning the prop-

Return of unpaid taxes.

erty of such nonresident. The same remedies and proceedings may be had in the name of such county treasurer or comptroller before the officer granting such order, and with a like effect, as are provided by law in proceedings against a judgment debtor supplementary to execution against him, returned wholly or in part unsatisfied. The expenses of a county treasurer, and such compensation as the board of supervisors may allow him for his services under this section, and for making and transmitting to the assessors of the several towns of his county an abstract or copy of the statements of the agents of nonresident creditors, shall be a county charge.

Tax Law, § 77; 3 R. S. 3111.

§ 84. **Return by collector of unpaid taxes.**—Every collector who makes and delivers to the county treasurer an account of unpaid taxes, upon the tax-roll annexed to his warrant, which he shall not have been able to collect, verified by his affidavit, that the sums mentioned therein remain unpaid, and that he has not, upon diligent inquiry, been able to discover any personal property out of which the same could be collected by levy and sale, shall be credited by the county treasurer with the amount of such account. In making such return of unpaid taxes, the collector shall add thereto five per centum of the amount thereof. In case such taxes is uncollected upon lands assessed to a resident he shall also state the reason why the same was not collected. Any collector who has heretofore failed in making such return of unpaid taxes, may make such return, whether his term of office has expired or not, verified by his affidavit, to the county treasurer any time within eight years after such failure and before the lands against which said taxes are assessed, are advertised for sale pursuant to this act, and in case any collector shall heretofore or hereafter fail to add said five per centum the county treasurer shall add the aforesaid five per centum of the amount of said uncollected tax as aforesaid. Such return shall be indorsed upon or attached to said roll, and shall be in the form to be prescribed by the state board of tax commissioners. Such tax and percentage may be paid to the county treasurer at any time before a return is made to the comptroller. The county treasurer in counties in which lands are sold by him for the nonpayment of taxes, is hereby authorized to incur and pay for such expenses as he may deem necessary for the examination of collector's returns.

Return when collection enjoined; payment.

and descriptions of property to be sold pursuant to this act, and the procurement of proper collector's returns and the examinations and procurement of matters and facts as he may deem necessary to make a valid tax sale hereunder, but such expense shall not exceed the amount of the five per centum added as aforesaid.

Tax Law, § 82, as am'd by Laws 1901, chap. 517.

The following is the form prescribed by the tax commissioners:

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

I,, collector of the town of being duly sworn, do depose and say that the following is a true account of the taxes remaining unpaid upon the assessment-roll of said town for the year 18.., with five per centum thereof added thereto, as required by statute:

That the sums mentioned therein remain unpaid, and I have not, upon diligent inquiry, been able to discover any personal property out of which the sum might be collected by levy and sales. The reason why the tax assessed to, residents of said town, was not collected, is as follows:

.....
Collector.

Subscribed to and sworn to before me,
this day of, 190..

.....
.....

See, *Sanders v. Downs*, 141 N. Y. 422.

§ 85. **Return when collection has been enjoined.**—Any stay, lawfully granted by any court of record by injunction other order or proceeding, of the collection of any tax existing at the expiration of the period for the collection of the tax under any warrant or process in the hands of the collector or other officer for the collection thereof, or existing at the time of the expiration of the term of office of the collector or officer holding such warrant, shall operate as an extension of the time within which such collector or other officer may collect such tax until such stay is terminated and for the period of thirty days thereafter. As to all other taxes to be collected under any such warrant or process, the collector or officer holding the warrant or process shall make a return thereof within the time prescribed by law.

Tax Law, § 83; 3 R. S. 3112.

§ 86. **Payment of money collected.**—Every collector shall, within one week after the time prescribed in his warrant for the payment of the moneys directed therein to be paid, pay to the officers and persons specified therein, the sums required in such

Extension of time.

warrant to be paid to them respectively. The officers and persons other than the county treasurer, to whom any such money shall be paid, shall deliver to the collector duplicate receipts therefor, one of which duplicates shall be filed by the collector with the county treasurer and shall entitle him to a credit in the books of the county treasurer for the amount therein stated to have been received, and no other evidence of such payment shall be received by the county treasurer. If any greater amount of taxes shall be levied in any town than the town charges thereof, and its proportionate share of the State taxes and county charges, the surplus shall be paid by the collector to the county treasurer, who shall place it to the credit of such town, and it shall go to the reduction of the tax upon the town for the succeeding year.

Tax Law, § 84.

§ 87. **Extension of time for collection.**—The county treasurer, upon application of the supervisor of any town or common council of any city in his county, may extend the time for collection of taxes remaining unpaid to a day not later than May first, following, in case the collector shall pay over all moneys collected by him and make his return of nonresident taxes, and renew his bond in a penalty twice the amount of the taxes remaining uncollected, approved by the proper officer upon filing the same, as the original bond is required to be filed, and delivering a certified copy thereof to such treasurer. Receivers of taxes who have filed a bond as required by statute shall not be required to renew their bonds. This section shall not affect any special law relating to the extension of time for the collection of taxes, nor be construed to extend the time for the payment of the state tax by the county treasurer, as required by this chapter.

Tax Law, § 85.

FORM No. 48.

APPLICATION OF SUPERVISOR FOR EXTENSION OF TIME FOR COLLECTION OF TAXES.

(Tax Law, § 85.)

To the County Treasurer of the county of

Application is hereby made, in pursuance of section 85 of the Tax Law, for an extension of time until March 1, 19.., for the collection of taxes in the town of, for the reason that (state reason for delay).

Dated this day of, 19..

A. B.,

Supervisor of the town of

Extension of time; payment of state tax.

ORDER OF TREASURER GRANTING EXTENSION.

(Tax Law, § 85.)

Upon application made to me, in pursuance to section 85 of the Tax Law, by A. B., supervisor of the town of, for an extension of time for the collection of taxes in such town, and the reason stated in such application appearing to me sufficient, and proof having been made to me that J. F., the collector of such town, has paid over all moneys heretofore collected by him and has made a return of nonresident taxes remaining unpaid, and renewed his bond in a penalty twice the amount of the taxes remaining uncollected, a certified copy of which has been delivered to me, it is hereby

Ordered, That the time for the collection of taxes remaining unpaid in such town is hereby extended until the 1st day of March, 19..

Dated this day of, 19..

E. D.,

County Treasurer of the county of

§ 88. **Extension of time for the collection of taxes.**—The county treasurer may extend the time for the collection of taxes in any town or ward, but no extension shall be permitted until the collector of taxes of the town, city or ward in which such extension shall be asked shall pay over to the county treasurer all the taxes collected by him, and renew his undertaking as the supervisor of his town shall approve, and furnish evidence by his oath, and other competent testimony, if any, as such treasurer shall require, that he has been unable, for cause stated, to collect all the taxes within the time required by his warrant; but such extension shall not in any case be made beyond the first day of April in any year, unless ninety per cent. of such taxes shall have been collected and paid over to him.

County Law, § 149.

§ 89. **Payment of state tax.**—The comptroller shall charge each county treasurer with the amount of the state tax levied on his county, except the tax for schools, crediting him with his fees, if any, but no fees shall be allowed by the comptroller for such portion of the state tax as is credited by him for unpaid nonresident taxes. The county treasurer of each county shall, after retaining his fees thereon, at the rate of one per centum thereof, which shall not, however, in any case exceed fifteen hundred dollars, for all taxes for state purposes, including schools, pay the state tax to the treasurer of the state, as follows: One-third of the state tax exclusive of the state tax for schools on or before the fifteenth day of February, one-third thereof on or before the fifteenth day of April, and unless otherwise provided by law, the

County treasurer's accounts with comptroller.

balance thereof on or before the fifteenth day of May in each year, and notify the comptroller of such payment. Whenever the state tax for schools, payable by any county, shall exceed the apportionment to such county of state school moneys as made by the state superintendent of public instruction, in accordance with the provisions of the consolidated school law, such excess shall be paid by the treasurer of such county to the treasurer of the state on or before the fifteenth day of March in each year, and such treasurer shall notify the state superintendent of public instruction of such payment. If there are not sufficient funds in the county treasury standing to the credit of any town to pay the state tax chargeable thereto, the treasurer shall borrow sufficient money upon the credit of the county and charge the same against such town, with interest thereon until the same is paid. If any county treasurer shall not pay over the state tax, including state tax for schools, as herein directed, the comptroller shall charge on all sums withheld such rate of interest as shall be sufficient to repay all expenditures incurred by the state in borrowing money equivalent to the amount so withheld, and such additional rate as he shall deem proper, not exceeding ten per centum, from the dates hereinbefore provided for such payments in each year, which shall be regarded as funds in the hands of the county treasurer belonging to the state and for which his sureties and county shall be liable. The fees of the county treasurer for collecting and paying over the school tax shall be allowed and paid by the superintendent of public instruction.

Tax Law, § 91, as am'd by Laws 1898, chap. 361; Laws 1902, chap. 378.

§ 90. **Accounts of county treasurer with comptroller.**—The comptroller shall state annually on June first, the account of each county treasurer, and if any part of a state tax is unpaid at that date, the comptroller shall transmit by mail to the county treasurer a copy of such accounts and a requisition that he must pay the balance due the state within thirty days, and if the tax is not paid within such time, the comptroller shall, unless he is satisfied by due proof that the treasurer has not received such balance, and has used due diligence in collecting the same, forthwith deliver a copy of the account to the attorney-general, who shall take the necessary proceedings to collect the same of the county treasurer or his sureties or otherwise, with interest as provided by the last preceding section. The comptroller may also, in his discretion,

Losses by default; receipt for taxes.

direct the board of supervisors of the county to institute the necessary proceedings on the undertaking of such county treasurer and his sureties. The comptroller shall also transmit to the board of supervisors on or before October tenth, a statement of account between his office and the county treasurer.

Tax Law, § 92.

§ 91. **Losses by default of collector or treasurer.**—All losses sustained, and all deficiencies in any taxes, or in the payments to be made therefrom, by reason of the default of any collector, shall be chargeable to the town or city of which he is collector. If occasioned by the default of the treasurer of any county in the discharge of his official duties, such losses shall be chargeable to such county. Any judgment against such treasurer for any such loss or deficiency on account of the state tax upon which an execution shall have been issued and returned unsatisfied shall be conclusive as to the fact of such loss or deficiency, and the amount of such deficiency shall thereupon become a charge against such county, and the board of supervisors thereof shall add all such losses or deficiencies to the next year's taxes of such town, city or county, and levy the same thereon.

Tax Law, § 93.

§ 92. **Receipts for taxes.**—The collector shall deliver a receipt to each person paying a tax, specifying the date of such payment, the name of such person, the description of the property as shown on the assessment-roll, the name of the person to whom the same is assessed, the amount of such tax, and the date of the delivery to him of the assessment-roll on account of which such tax was paid. For the purpose of giving such receipt, each collector shall have a book of blank receipts, so arranged that when a receipt is torn therefrom a corresponding stub will remain. The state board of tax commissioners shall prescribe the form of such receipts, stubs and books and they shall be furnished to the collector by the board of supervisors, at the expense of the county. At the time of giving such a receipt, the collector shall make the same entries on the corresponding stub as are required to be made on the receipt. Such book shall be subject to public inspection and shall be filed by the collector with his return, together with the assessment-roll in the office of the county treasurer.

Tax Law, § 94.

§ 93. **Article, how applicable.**—This article * shall apply to

Power of county court; payment of moneys, etc.

all the cities or towns of the state, in so far as the matters herein provided for do not conflict with the special and local laws of such cities or towns.

Tax Law, § 95.

§ 94. Power of county court when collector fails to pay over.

—If any collector shall neglect or refuse to pay over the moneys collected by him, to any of the persons to whom he is required to pay the same by his warrant, or to account for the same as unpaid, the county court, on proof of such fact by affidavit, on application of the county treasurer, shall make an order directed to the sheriff of the county, commanding him to levy such sum as shall remain unpaid by such collector out of his property, personal and real, and pay the same to the county treasurer, within sixty days from the date of such order. The sheriff shall cause the same to be executed, and pay to the county treasurer the money levied by virtue thereof, deducting for his fees the same compensation that the collector would have been entitled to retain. If the whole sum due from the collector, or if a part only, or if no part thereof, shall be collected, the sheriff shall state the fact in his return, which shall be made as in the case of an execution, and the county treasurer shall give notice to the supervisor of the town, city or division thereof, of any amount which may remain due from such collector. If the sheriff shall neglect to execute the order, or to pay over the money collected thereon, within the time limited thereby, he shall be liable therefor as in case of an execution, and the county treasurer shall immediately prosecute such sheriff and his sureties for the sum due from him, which sum when collected shall be paid into the county treasury.

Tax Law, § 260; 3 R. S. 3156.

§ 95. Payment of moneys collected.—The county treasurer shall pay over the moneys received from the sheriff upon such order in the manner directed by the warrant to the collector. If the whole amount of moneys due from the collector shall not be collected on such warrant, or otherwise, the county treasurer shall first retain the amount which ought to have been paid to him before making any payment to the town officers.

Tax Law, § 261.

§ 96. Collection of deficiency from collector's bondsmen.—If it appears that the whole or any part of the moneys due from

Surplus of tax sale.

the collector has not been thus collected, the county treasurer shall forthwith give notice to the supervisor of the town or ward of the amount still due from such collector. The supervisor shall forthwith cause the undertaking of the collector to be prosecuted, and shall be entitled to recover thereon the sum due from the collector, with costs of the action. The moneys received shall be applied and paid by the supervisor in the same manner as they should have been by the collector.

Tax Law, § 262.

The act requiring a county treasurer to issue a warrant against a delinquent town collector in twenty days is directory merely; and the issue of such warrant after the expiration of that time is valid as the foundation of an action against the collector's sureties.

It seems that the issue and return of such a warrant by the treasurer is a condition precedent to the maintaining a suit by the supervisor against the collector or his sureties on his official bond.

It furnishes no defense to the sureties of a collector that, if the warrant against their principal had been issued within the time prescribed by law, the amount due might have been collected of him. The provision is for the benefit of the public, and forms no part of the contract of the sureties.

Looney, Supervisor, etc., v. Hughes et al., 26 N. Y. 514.

Also, Muzzy v. Shattuck, 1 Denio 233.

Bd. Supr. v. Otis, 62 N. Y. 88; McKecknie v. Ward, 58 N. Y. 541; People v. Faulkner, 107 N. Y. 486.

A collector and his sureties are liable for moneys stolen from him.

Muzzy v. Shattuck, 1 Den. 233; cited with approval, 107 N. Y. 486.

·26 § Settlement of conflicting claims to surplus of tax sale.—

Whenever a surplus from the sale of any property, for unpaid taxes in the hands of the supervisor of a town, shall be claimed by any person, other than the person for whose tax such property was sold, and such claim shall not be settled by a stipulation filed with the supervisor, as provided by this chapter, such claimant may maintain an action against such person, or such person may maintain an action against such claimant, to recover such money, and, for the purposes of such action, the defendant shall be deemed to be in possession of the surplus in the hands of the supervisor. Upon the production of a certified copy of a final judgment, rendered in favor of either party, the supervisor shall pay such surplus to the party recovering the same. No other cause of action shall be joined, nor any set-off or counterclaim be allowed in an action brought pursuant to this section, and if an execution issue on a judgment rendered in such action, it shall direct that the costs only of such judgment be levied thereon.

Tax Law, § 264.

Deduction of tax refunded, maps.

§ 98. **Deduction overcharged to be refunded.**—The comptroller may refund taxes overcharged upon lands, and charge the amount so refunded to the county and transmit an account thereof to the treasurer. The county treasurer shall deliver such account to the board of supervisors at their next annual meeting, who shall cause the amount thereof to be added to the taxes of the tax district in which the tax was assessed, and when collected it shall be paid into the treasury of the county.

Tax Law, § 108; 3 R. S. 3118.

§ 99. **Refund of tax paid upon illegal, erroneous or unequal assessment.**—If in a final order on any such proceeding (in *certiorari*) it shall be ordered or adjudged that the assessment complained of was illegal, erroneous or unequal, and such order shall not be made in time to enable the assessors or other officers to make a new or corrected assessment for the use of the board of supervisors, then at the first annual session of the board of supervisors after such correction there shall be audited and allowed to the petitioner and included in the tax levy of such town, village or city, made next after the entry of such order, and paid to the petitioner, the amount paid by him, in excess of what the tax would have been if the assessment had been made as determined by such order of the court, together with interest thereon from the date of payment. In case the amount deducted from such assessment by such order exceeds ten thousand dollars, so much thereof as shall be refunded by reason of such corrected assessment, other than the proportion or percentage thereof collected for such town, village or city purposes, shall be levied upon the county at large and paid to the petitioner without further audit. The board of supervisors shall audit and levy upon such town, village or city, the proportion or percentage of such excess of tax collected for such town, village or city purposes, which shall be collected and paid to the petitioner without other or further audit.

Tax Law, § 256; 3 R. S. 3154.

§ 100. **Maps to be furnished Comptroller.**—The comptroller may apply to the supervisor of any town for maps of any tract of land returned from such town for nonpayment of taxes, if he deems it necessary, in order to test the correctness of the description thereof, preparatory to a sale of such lands and the supervisor shall furnish such maps at the expense of the town, if they

Purchases by comptroller.

can be procured; if not, he shall furnish such descriptions of the lands as he can obtain, with a statement of the quantity in each subdivision, if the same is divided. The treasurer of every county shall, on receiving a list of lands to be sold at a State sale, transmit to the comptroller at least one month before any State tax sale, a certified list of all lands bid in at any tax sale, in the name of such county or transferred to such county upon any such sale, or to which the county may have acquired a tax title, the deed for which has not been recorded in the office of the clerk of the county which may then be liable to be sold at such sale. Every county clerk shall, on receipt of a list of the lands therein liable to be sold at any State tax sale and at least one month before the sale, transmit to the comptroller a certified list of all lands the conveyances of which are on record in his office, then owned by such county and liable to be sold at such sale.

Tax Law, § 121; 3 R. S. 3119.

§ 101. **Purchases by the comptroller for State or county.**—The comptroller shall bid in for the State all lands of the State, and also all lands which may have been bid in by or for the State at any tax sale which has not been canceled, or from which said lands have not been duly redeemed, liable to be sold at any tax sale held by him, or lands that are then mortgaged to the commissioners for loaning certain moneys of the United States, and for each county, all lands belonging to such county liable to be sold at such sale, and also all lands which may have been bid in by or for such county at any tax sale which has not been canceled or from which said lands have not been duly redeemed; and to reject any and all bids made for any of such lands. The comptroller shall make certificates of sales for all lands so bid by him, describing the lands purchased and specifying the time when a deed therefor can be obtained. Such purchases shall be subject to the same right of redemption as purchases by individuals; and if the land so sold shall not be redeemed, the comptroller's deed therefor shall have the same effect and become absolute in the same time, and on the performance of the like conditions, as in the case of sales and conveyances to individuals. The comptroller shall charge to each county, on the books of his office, the amount for which it may be liable, by reason of any purchase made in accordance with this section, and such amount shall become due on the last day of each tax sale, and shall be payable in the same manner

Comptroller's Deeds.

as the State tax is required by law to be paid. The comptroller shall, as soon as practicable, after each tax sale, transmit the certificates of sale for such lands to the treasurer of each of such counties, on receipt of which the county treasurer shall enter the same, in their proper order, in a book to be kept by him for such purpose, and unless otherwise directed by the board of supervisors of his county, shall have full power and authority, until the expiration of one year from the last day of such sale, to sell and assign any of such certificates for any land not at the time owned by his county, on payment therefor, into the county treasury, of the amount for which the land described therein was sold at such tax sale, with interest thereon, from the date of such tax sale to the date of such sale and assignment by him. All such sales and assignments shall be duly and fully entered by such county treasurer in such book, which book shall be a part of the records of the county. If any such tax sale certificate shall not have been sold or assigned by the respective county treasurers on or before the expiration of one year from the last day of such sale, each of such county treasurers shall then transmit such unsold certificate or certificates to the comptroller, who shall issue to the board of supervisors of each county, respectively, a deed or deeds for all the lands described thereon then remaining unredeemed, or the sale for which has not been canceled. The title thus acquired by the boards of supervisors shall be held by them in trust for their respective counties, and may be disposed of by them at such times and on such terms as shall be determined by a majority of such board at any regular or special meeting thereof.

Tax Law, § 123, as am'd by Laws 1897, chap. 233.

§ 102. **Comptroller's deeds and application therefor.**—The owner of any certificate of sale of land sold by the comptroller for taxes after January first, nineteen hundred and two, and not redeemed, (except the state, and the purchaser at the tax sale who is the owner with a duly recorded title of the land sold), must make application in writing to the comptroller for a conveyance of the land described in the certificate within four years after the expiration of one year from the last day of the sale. The owner of any certificate of sale of land sold by the comptroller for taxes prior to January first, nineteen hundred and two, (except the state, and the purchaser at the tax sale who is the owner with a duly recorded title of the land sold,) must make ap-

Expense of publication; cancellation of sales.

plication in writing to the comptroller for a conveyance of such land within one year after May first, nineteen hundred and two, provided the purchaser at the tax sale, his heirs, devisees, executors or testamentary trustees have not conveyed the land therein described and such conveyance been duly recorded, or mortgaged the same and the mortgage has been foreclosed and the land sold and conveyed thereunder or said land has not been redeemed from the tax sale. If application for a conveyance is not made as herein provided the certificate shall become void, and no claim can be maintained under the purchase. After the expiration of one year from the time of sale the comptroller shall, after application in writing therefor and upon the surrender of the certificate or upon proof to his satisfaction that the certificate has been lost or is wrongfully detained, execute in the name of the people of the state to the owner of such certificate a conveyance of any lands so sold by him for taxes and not redeemed, under his hand and official seal, and witnessed by the deputy comptroller, or state treasurer, which shall vest in the grantee an absolute estate in fee simple, subject to all claims which the state may have thereon for taxes or other liens or encumbrances, and which shall be presumptive evidence that the sale and all proceedings prior thereto, from and including the assessment of lands sold, and that all notices required by law to be given previous to the expiration of the time allowed by law for the redemption thereof, were regular and in accordance with all the provisions of law relating thereto. After two years from the date of such conveyance such presumption shall be conclusive. Every certificate of conveyance executed by the comptroller under this act may be recorded in the same manner and with like effect as a conveyance of real estate properly acknowledged or proven.

Tax Law, § 131, as am'd by Laws 1898, chap. 339; Laws 1902, chap. 344.

§ 103. **Expense of publication.**—The expense of publishing the notices of unredeemed lands is a county charge and to be audited and paid by board of supervisors.

Tax Law, § 130.

§ 104. **Cancellation of sales.**—The comptroller shall not convey any lands sold for taxes if he shall discover before the conveyance, that the sale was for any cause invalid or ineffectual to give title to the lands sold; but he shall cancel the sale and forth-

Lands sold for unpaid taxes.

with cause the purchase money and interest thereon to be refunded out of the state treasury to the purchaser, his representatives or assigns. If the error originated with the county or town officers, the sum paid shall be a charge against the county from which the tax was returned, and the board of supervisors thereof shall cause the same to be assessed, levied and collected and paid into the state treasury. If he shall not discover that the sale was invalid until after a conveyance of the lands sold shall have been executed he shall, on application of any person having any interest therein at the time of the sale, on receiving proof thereof, cancel the sale, refund out of the state treasury to the purchaser, his representatives or assigns, the purchase money and interest thereon, and recharge the county from which the tax was returned, with the amount of purchase money and interest from the time of sale, which the county shall cause to be levied and paid into the state treasury. On any such application the comptroller may appoint a commissioner with like powers and duties as in case of an application for redemption; provided, however, that in any county which does not include a portion of the forest preserve, such application for cancellation may also be made by the owner of the lands at the time of the tax sale.

Tax Law, § 140.

§ 105. **When lands to be sold for unpaid taxes.**—Whenever any tax charged on real estate, in the counties of Saint Lawrence, Lewis, Clinton and Oneida, or in a county not including a portion of the forest preserve, is returned to the county treasurer, he shall not return the same to the comptroller, but if such tax, with interests thereon at the rate of ten per centum per annum, computed from the first day of February, after the same is levied, shall remain unpaid for six months from that date, such county treasurer shall advertise and sell such real estate as herein provided for the payment of such tax and interest and the expenses of such sale. The expense of publication of the notice of sale and the list of lands to be sold and the expense of conducting the sale, and the expense of publication of the notice of unredeemed lands, if thereafter redeemed, shall be a charge on the land liable to be sold and shall be added to the tax and interest. The county treasurer of the county of Rockland may defer the sale of any parcel of nonresident real estate in such county for unpaid taxes, until the unpaid

Advertisement and sale.

taxes thereon with accrued interest shall amount in the aggregate to the sum of two dollars.

Tax Law, § 150, as am'd by Laws 1898, chap. 362; Laws 1901, chap. 261; Laws 1902, chap. 171; Laws 1903, chap. 170; Laws 1906, chap. 189.

§ 106. **Advertisement and sale.**—The county treasurer shall immediately after the expiration of such six months cause to be published at least once in each week for six weeks, in two newspapers designated for the publication of the session laws, a list of real estate so liable to be sold, together with a notice that such real estate will, on a day at the expiration of said six weeks specified in such notice, and the succeeding days, be sold at public auction at the courthouse in the county where the same is situated, to discharge the taxes, interest and expenses that may be due thereon, at the time of such sale. Such list shall contain the name of the owner or occupant of each piece of real estate to be sold, as the same appears upon the assessment roll of the year in which unpaid taxes were assessed, a brief description of such real estate, and the total amount of such unpaid taxes for the year advertised, which said total amount shall include all taxes, interest, expenses and other charges against the property for the year advertised. The comptroller may prescribe the form and manner of preparing such list, which when so prescribed shall be followed so far as possible by the several counties of the state. No such list shall be published until the same shall have been submitted to and approved by the state comptroller. On the days mentioned in such notice the county treasurer shall begin the sale of said real estate and continue the same from day to day. The charges for publishing such notice shall be seventy-five cents per folio for the first insertion, and fifty cents per folio for each subsequent insertion. The counties of Saint Lawrence, Lewis, Clinton and Oneida, and the counties of the state other than those in the forest preserve are empowered to acquire and hold such lands. Within twenty days after the time for redemption has expired the county treasurer of each of the counties of Saint Lawrence, Lewis, Clinton and Oneida shall file with the comptroller a certified statement of all tracts or parcels of land situated in the forest preserve which have been bid in by the county and have not been redeemed, and shall sell and convey to the state any tract or parcel of land specified in such statement, which the comptroller shall designate within six months after such statement is filed, upon the

Conveyance; purchase price refunded.

payment of the taxes, interest and expenses due thereon at the time of the sale and also all taxes assessed thereon since such sale, and the comptroller shall draw his warrant on the state treasurer for the amount thereof or credit the county with such amount on the books of his office. After the expiration of such six months in the counties of Saint Lawrence, Lewis, Clinton and Oneida, and after the time for redemption has expired in any other county, the county treasurer is authorized in the name of the board of supervisors of the county to sell and convey under his hand and seal such lands as have not been conveyed to the state in the manner and upon such terms as the board of supervisors of the county may direct.

*So in original.

Tax Law, § 151, subd. 2, as am'd by Laws 1906, chap. 189.

§ 107. **Conveyance by county treasurer.**—If such real estate, or any portion thereof, be not redeemed as herein provided, the county treasurer shall execute to the purchaser a conveyance of the real estate so sold, the description of which real estate shall include a specific statement of whose title or interest is thereby conveyed, so far as appears on the record, which conveyance shall vest in the grantee an absolute estate in fee, subject, however, to all claims the county or State may have thereon for taxes or liens or incumbrance. The county treasurer shall receive from the purchaser fifty cents for preparing such conveyance, and ten cents additional for each piece or parcel of land described therein, exceeding the first. All purchases made for the county shall be included in one conveyance for which the county treasurer shall receive ten dollars. Every such conveyance shall be executed by the treasurer of the county under his hand and seal, may be recorded in the same manner and with like effect as a conveyance of real estate properly acknowledged or proven. The money received by the county treasurer on every such sale shall be applied by him, after deducting the expenses thereof, in like manner as if the same had been paid to him by the collectors of the several towns.

Tax Law, § 153, as am'd by chap. 490, Laws 1897; as am'd by chap. 339, Laws 1898.

§ 108. **When purchase money to be refunded.**—Whenever any purchaser under such sale shall be unable to regain possession of the real estate purchased by him by reason of error or irregu-

Fees.

larity in the assessment or levying of a tax, or in proceedings for the collection thereof, the board of supervisors of the county shall refund the purchase money so paid, with interest upon the same being presented and audited as other county charges, and such moneys shall be charged over to the tax district where the irregularity arose.

Tax Law, § 155; 3 R. S. 3130.

§ 109. Collectors.—Fees.

On all sums paid within thirty days from first posting	
notice if aggregate shall not exceed \$2,000.....	2 Per Cent.
Otherwise 1 per cent thereto.....	3 Per Cent.
After 30 days.....	5 Per Cent.
Collector shall receive on all taxes returned to Co.	
Treas. unpaid	2 Per Cent.
Tax Law, § 81.	

Collector on dog tax.....	10 Per Cent.
For every dog or bitch killed by law.....	\$1 00
County Law, § 115.	

CHAPTER FIVE.

CORPORATION TAX.

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| §110. Corporation, places of taxation. | §123. Certain corporations exempt from tax on capital stock. |
| §111. Taxation of corporate stock. | §124. Additional franchise tax on transportation corporations, etc. |
| §112. Stockholders of bank taxable on shares. | §125. Franchise tax on elevated or surface railroads not operated by steam. |
| §113. Place of taxation of individual bank capital. | §126. Franchise tax on water works companies, gas companies, electric or steam heating, etc. |
| §114. Bank to make report. | §127. Franchise tax on insurance corporations. |
| §115. Bank shares, how assessed. | §128. Franchise tax on trust companies. |
| §116. Individual banker, how assessed. | §129. Franchise tax on savings banks. |
| §117. Notice of assessment to bank or association. | §130. Tax upon foreign bankers. |
| §118. Reports of corporations. | §131. Exemptions from other state taxation. |
| §119. Penalty for omission to make statement. | §132. County clerks to furnish data respecting corporations. |
| §120. Corporations, how assessed. | |
| §121. Assessors to apportion valuation of railroad, telegraph, telephone or pipe line companies between school districts. | |
| §122. The state tax on franchises. | |

§ 110. **Place of taxation of property of corporations.**—The real estate of all incorporated companies liable to taxation shall be assessed in the tax district in which the same shall lie, in the same manner as the real estate of individuals. All the personal estate of every incorporated company liable to taxation on its capital shall be assessed in the tax district where the principal office or place of transacting the financial concerns of the company shall be, or if such company have no principal office, or place for transacting its financial concerns, then in the tax district where the operations of such company shall be carried on. In the case of toll bridges, the company owning such bridge shall be assessed in the tax district in which the tolls are collected; and where the tolls of any bridge, turnpike, or canal company are collected in several tax districts, the company shall be assessed in the tax district in which the treasurer or other officer authorized to pay the last preceding dividend resides.

Tax Law, § 11; 3 R. S. 3095.

Taxation of corporate stock.

The principal office named in the certificate is conclusive as to the place where the company should be taxed.

People v. Barker, 87 Hun, 341; Cheesebro v. Coleman, 44 Hun, 545; Union Steamboat Co. v. Buffalo, 82 N. Y. 351.

If the principal office is not stated in the certificate the actual principal place of business determines the residence.

Austen v. Telephone Co., 73 Hun, 96.

Where the principal office is stated in sworn statement of the officer the company is estopped from claiming any other office.

Matter of McLean, 138 N. Y. 158.

A railroad company should be regarded as a resident of the various towns and wards through which it extends and assessed therein for its real estate the same as other taxable inhabitants and not as non-resident lands.

People v. Cassity, 46 N. Y. 46; Buffalo etc. v. Supervisors, 48 N. Y. 93.

§ 111. Taxation of corporate stock.—The capital stock of every company liable to taxation, except such part of it as shall have been excepted in the assessment-roll or shall be exempt by law, together with its surplus profits or reserve funds exceeding ten per centum of its capital, after deducting the assessed value of its real estate, and all shares of stock in other corporations actually owned by such company which are taxable upon their capital stock under the laws of this State, shall be assessed at its actual value.

Tax Law, § 12; 3 R. S. 3095.

Capital stock is the capital or property of the corporation and not its shares of stock.

People v. Coleman, 126 N. Y. 433; People v. Norton, 53 App. Div. 557; People v. Comrs., 104 N. Y. 240; People v. Barker, 144 N. Y. 94.

Real property is to be included at its actual value.

People v. Barker, 146 N. Y. 30; People v. Neff, 29 Misc. 59; People v. Barker, 7 App. Div. 27; People v. Clapp, 152 N. Y. 490.

A deduction of ten per cent. of the capital is only allowed where the surplus equals that sum.

People v. Neff, 26 App. Div. 542.

The surplus profits and reserve funds referred to in the above section are the accumulations of the company of moneys or property in excess of the par value of the stock issued by it, and if after the real estate and personal property is assessed at its actual value no surplus over the par value of the stock is shown or if such surplus does not exceed ten per cent. of the capital, there is nothing to assess as surplus and nothing from which ten per cent. of the capital can be deducted.

People v. Barker, 165 N. Y. 305.

The actual value of the stock means its market value.

People v. Coleman, 107 N. Y. 541; People v. Assessors, etc., 154 N. Y. 437.

Exempt property is not to be included.

People v. Barker, 139 N. Y. 55.

The corporation is entitled to have its debts deducted from the value of the property in an assessment of its personal property for town, county or municipal purposes.

People v. Dederick, 161 N. Y. 195.

Taxation of corporate stock.

The franchise, the right which the corporation has to do business, or the grant that the corporation has from the town or municipality permitting it to do business, is not to be assessed under this section but is to be separately assessed.

People v. Barker, 146 N. Y. 304; People v. Neff, 15 App. Div. 585; People v. Neff, 19 App. Div. 599; Affd., 154 N. Y. 437.

The value of the real estate is to be deducted from the gross capital and such deduction is to be made ordinarily at its assessed valuation.

People v. Comrs., 80 N. Y. 573; People v. Asten, 100 N. Y. 597; People v. Barker, 144 N. Y. 94.

Joint stock companies formed solely by private agreement and not under the statute are not corporations within the meaning of this law.

People v. Wemple, 117 N. Y. 136.

Surplus earnings of a foreign manufacturing company carrying on a portion of its business in this state invested in real estate in this state leased to third parties not occupied or used by the corporation in the transaction of its ordinary business, and which is taxable for general, state and local purposes, is not capital stock and taxable as such under the corporation tax act of 1880.

People v. Wemple, 150 N. Y. 46.

The assessors are justified in determining the actual value by deducting only the assessed value of the real estate and taxing as capital and surplus the difference between the assessed and actual value as represented by the cost, the real estate constituting the principal asset.

People v. Feitner, 60 App. Div. 282.

The above section requires the valuation of the whole property, whether real or personal, in order to ascertain the capital which is subject to taxation, and after the assessed value of the real estate is deducted therefrom the balance is the capital subject to assessment after deducting the debts and legal exemptions.

People v. Feitner, 58 App. Div. 555.

In assessing capital stock and surplus of the corporation outstanding bonds issued by it constitute an indebtedness to be deducted from the amount of the personality.

Capital stock, as that term is used, does not mean shares of stock, it is limited to the actual money or property paid in and possessed by the corporation.

The assessors have no power to determine the assessable value of the franchise.

In assessing for general taxation the capital stock of the corporation where it has included in the statement of its assets only the value of its equity of redemption in a piece of mortgaged real estate owned by it for which mortgage it is not liable, it is entitled to deduct as the value of its real estate only the assessed value of such equity and not the whole assessed valuation of the real property.

People v. Wells, 180 N. Y. 62.

It is proper in assessing the tax to include in ascertaining the capital the value of patent rights owned by the company although such rights could not be taxed directly as property.

People v. Knight, 174 N. Y. 475; People v. Kelsey, 101 App. Div. 325; Affd., 181 N. Y. 512.

Stockholders taxable; place of taxation.

A trade mark may also be included.
People v. Kelsey, 105 App. Div. 132.

§ 112. Stockholders of bank taxable on share.—The stockholders of every bank or banking association organized under the authority of this State, or of the United States, shall be assessed and taxed on the value of their shares of stock therein; said shares shall be included in the valuation of the personal property of such stockholders in the assessment of taxes in the tax district where such bank or banking association is located, and not elsewhere, whether the said stockholders reside in said tax district or not.

Tax Law, § 13; 3 R. S. 3096.

Such taxation shall not be at greater rate than is the rate of assessment upon other capital in hands of individual and in case the shares are owned by nonresidents shall be taxed in the city or town where the bank is located.

U. S. R., § 5219; *Matter of Application of McMahon v. Palmer*, 102 N. Y. 176; *M. N. Bank v. Mayor*, 121 U. S. 138; *Palmer v. McMahon*, 133 id. 660; *Van Allen v. Assessors*, 4 Wall. (U. S.) 113; *Williams v. Weaver*, 75 N. Y. 30.

They should be taxed at their actual or market value instead of par value.
People v. Comr., 67 N. Y. 516; *People v. Comr.*, 94 U. S. 415.

Such assessment is subject to a deduction for the debts of the owner.
People v. Weaver, 100 U. S. 539.

§ 113. Place of taxation of individual bank capital.—Every individual banker shall be taxable upon the amount of capital invested in his banking business in the tax district where the place of such business is located and shall, for that purpose, be deemed a resident of such tax district.

Tax Law § 14; 3 R. S. 3096.

The term “individual banker” as used in the statutes denotes a person who having complied with the statutory requirements has received authority from his banking department to engage in the business of banking subject to its inspection and supervision.

Perkins v. Smith, 116 N. Y. 441.

“Private” bankers are persons or firms engaged in banking without having any special privileges or authority from the State.

Perkins v. Smith, 116 N. Y. 441, 448; *City People v. Doty*, 80 N. Y. 225.

An individual banker doing business as such under the laws of this State who assumes a special name by which his said business is characterized or known may be assessed by that name and warrant for collection of such tax issued against such name and levied upon money or property used in the business of said banker.

Patchin v. Ritter, 27 Barb. 34.

The residence of such banker, for purposes of taxation, is the town or

Banks to report.

ward specified as the location of his banking-house in the certificate required by law.

Miner v. Fredonia, 27 N. Y. 155.

A banker assessed \$3,000 on his banking-house, \$25,000 on capital stock, \$28,000 for personal property, including surplus, from which last item the value of his banking-house was deducted, testified before the assessors that he had no personal property liable to taxation except the capital of the bank, amounting to \$25,000; that \$10,000 of this was in United States bonds and that his banking-house formed part of his capital stock. Held, that it was the duty of the assessors to strike from the valuation of his capital the valuation of the banking-house; to strike out the \$10,000 United States bonds, and that the whole assessment for personal property should be struck out, as there was nothing in the evidence to justify them in retaining that item against his oath.

People ex rel. Raplee v. Reddy, 43 Barb. 539.

§ 114. **Banks to make report.**—The chief fiscal officer of every bank or banking association organized under the authority of this state, or of the United States, shall, on or before the first day of July, in each year, furnish the assessors of the tax district in which its principal office is located a statement under oath of the condition of such bank or banking association on the first day of June next preceding, stating the amount of its authorized capital stock, the number of shares and the par value of the shares thereof, the amount of stock paid in, the amount of its surplus and of its undivided profits, if any, a complete list of the names and residences of its stockholders and the number of shares held by each. In case of neglect or refusal on the part of any bank or banking association to report as herein prescribed, or to make other or further reports as may be required such bank or banking association shall forfeit the sum of one hundred dollars for each failure, and the additional sum of ten dollars for each day such failure continues, and an action therefor shall be prosecuted by the county treasurer of the county in which such bank or banking association so neglecting or refusing to report is located, and in the city of New York by the receiver of taxes thereof. There shall, in addition to such report, be kept in the office of every such bank or banking association a full and correct list of the names and residences of all stockholders therein, and of the number of shares held by each, and such lists shall be subject to the inspection of the assessors at all times. The list of stockholders furnished by such bank or banking association shall be deemed to contain the names of the owners of such shares as are set opposite them, respectively, for the purpose of assessment and taxation.

Tax Law, § 23, as am'd by Laws 1901, chap. 550.

Bank shares.

REPORT OF BANK TO LOCAL ASSESSORS.
(Tax Law, § 23.)

To the Assessors of the town of

I, cashier (or other chief fiscal officer) of the Bank, having its principal office located in the of, county of, N. Y., in pursuance of section 23 of the Tax Law, do hereby make the following statement of the condition of such bank on the first day of June, 19..:

1. The amount of the authorized capital stock of such bank is..... thousand dollars, divided into..... shares of the par value of hundred dollars each.

2. The total amount of the stock of such bank which has been paid in is dollars.

3. The amount of the surplus of such bank is dollars; and the amount of its undivided profit is dollars.

The following is a complete list of the names and residences of the stockholders of such bank, and the number of shares held by each:

Name of stockholder.	Residence.	No. of shares.
----------------------	------------	----------------

Dated this day of, 190..

.....
Cashier (or other chief fiscal officer) of bank.

VERIFICATION.

STATE OF NEW YORK, }
COUNTY OF..... } ss.:

....., being duly sworn, says that he is the cashier of the Bank; that he subscribed the foregoing statement as such cashier and has read the same and knows the contents thereof, and that such statement is in all respects true.

Signed

Subscribed and sworn to before me,
this day of, 19..

.....
Notary Public county.

§ 115. Bank shares, how assessed.—In assessing the shares of stock of banks or banking associations organized under the authority of this state or the United States, the assessment and taxation shall not be at a greater rate than is made or assessed upon other monied capital in the hands of individual citizens of this state. The value of each share of stock of each bank and banking association, except such as are in liquidation, shall be ascertained and fixed by adding together the amount of the capital stock, surplus and undivided profits of such bank or banking association and by dividing the result by the number of outstanding shares of such bank or banking association. The value of each share of stock in each bank or banking association in liquidation shall be ascertained and fixed by dividing the actual assets of such bank or banking association by the number of outstanding shares of such bank or banking association. The rate of tax upon the

Bank shares.

shares of stock of banks and banking associations shall be one per centum upon the value thereof, as ascertained and fixed in the manner hereinbefore provided, and the owners of the stock of banks and banking associations shall be entitled to no deduction from the taxable value of their shares because of the personal indebtedness of such owners, or for any other reason whatsoever. Complaints in relation to the assessments of the shares of stock of banks and banking associations made under the provisions of this act shall be heard and determined as provided in article two, section thirty-six of the tax law. The said tax shall be in lieu of all other taxes whatsoever for state, county or local purposes upon the said shares of stock, and mortgages, judgments and other choses in action and personal property held or owned by banks or banking associations the value of which enters into the value of said shares of stock, shall also be exempt from all other state, county or local taxation. The tax herein imposed shall be levied in the following manner: The board of supervisors of the several counties shall, on or before the fifteenth day of December in each year, ascertain from an inspection of the assessment rolls in their respective counties, the number of shares of stock of banks and banking associations in each town, city, village, school and other tax district, in their several counties, respectively, in which such shares of stock are taxable, the names of the banks issuing the same, respectively, and the assessed value of such shares, as ascertained in the manner provided in this act and entered upon the said assessment rolls, and shall forthwith mail to the president or cashier of each of said banks or banking associations a statement setting forth the amount of its capital stock, surplus and undivided profits, the number of outstanding shares thereof, the value of each share of stock taxable in said county, as ascertained in the manner herein provided, and the aggregate amount of tax to be collected and paid by such bank and banking association, under the provisions of this act. A certified copy of each of said statements shall be sent to the county treasurer. It shall be the duty of every bank or banking association to collect the tax due upon its shares of stock from the several owners of such shares, and to pay the same to the treasurer of the county wherein said bank or banking association is located, and in the city of New York to the receiver of taxes thereof on or before the thirty-first day of December in said year; and any

Bank shares.

bank or banking association failing to pay the said tax as herein provided shall be liable by way of penalty for the gross amount of the taxes due from all owners of the shares of stock, and for an additional amount of one hundred dollars for every day of delay in the payment of said tax. Every bank or banking association so paying the taxes due upon the shares of its stock shall have a lien on the shares of stock, and on all property of the several share owners in its hands, or which may at any time come into its hands, for reimbursement of the taxes so paid on account of the several share holders, with legal interest; and such lien may be enforced in any appropriate manner. The tax hereby imposed shall be distributed in the following manner: The board of supervisors of the several counties shall ascertain the tax rate of each of the several town, city, village, school and other tax districts in their counties respectively, in which the shares of stock of banks and banking associations shall be taxable, which tax rates shall include the proportion of state and county taxes levied in such districts, respectively, for the year for which the tax is imposed, and the proportion of the tax on bank stock to which each of said districts shall be respectively entitled shall be ascertained by taking such proportion of the tax upon the shares of stock of banks and banking associations, taxable in such districts respectively, under the provisions of this act at the tax rate of such tax district shall bear to the aggregate tax rates of all the tax districts in which said shares of stock shall be taxable. The clerk of the several cities, villages and school districts to which any portion of the tax on shares of stock of banks and banking associations is to be distributed under this act shall, in writing and under oath annually, report to the board of supervisors of their respective counties, during the first week of the annual session of such board, the tax rate of such city, village and school district for the year prior to the meeting of each such board. The said board of supervisors shall issue their warrant or order to the county treasurer on or before the fifteenth day of December in each year, setting forth the number of shares of bank stock taxable in each town, city, village, school and other tax district in said county, in which said shares of stock shall be taxable, the tax rate of each of said tax districts for said year, the proportion of the tax imposed by this act to which each of said tax districts is entitled, under the provisions thereof, and commanding him to col-

Bank shares.

lect same, and to pay to the proper officer in each of such districts the proportion of such tax to which it is entitled under the provisions of this act. The said county treasurer shall have the same powers to enforce the collection and payment of said tax as are possessed by the officers now charged by law with the collection of taxes, and the said county treasurer shall be entitled to a commission of one per centum for collecting and paying out said moneys, which commission shall be deducted from the gross amount of said tax before the same distributed. In issuing their warrants to the collectors of taxes, the board of supervisors shall omit therefrom assessments of and taxes upon the shares of stock of banks and banking associations. All assessments of the shares of stock of banks and banking associations made on or after January first, nineteen hundred and one, and prior to the passage of this act, shall be null and void, and new assessments thereof shall be made agreeably to the provisions of this act. Provided, that, in the city of New York the statement of the bank assessment and tax herein provided for shall be made by the board of tax commissioners of said city, on or before the fifteenth day of December in each year, and by them forthwith mailed to the respective banks and banking associations located in said city, and a certified copy thereof sent to the receiver of taxes of said city. The tax shall be paid by the respective banks in said city to the said receiver of taxes on or before the thirty-first day of December in said year, and said tax shall be collected by the said receiver of taxes and shall be by him paid into the treasury of said city to the credit of the general fund thereof. This act is not to be construed as an exemption of the real estate of banks or banking associations from taxation.

Tax Law, § 24, as amended by Laws 1901, chap. 550; Laws 1902, chap. 126; Laws 1903, chap. 267.

Prior to the amendment of 1901 the assessed value of the real estate was to be deducted (*Jenkins v. Neff*, 163 N. Y. 320), but by the amendment of 1901 an entirely new scheme was adopted, as the assessing of bank shows. Now, the assessing officers when ascertaining the value of the corporate properties are required to include the real estate owned by the corporation.

In re First N. Bk. of Ossining, 182 N. Y. 460.

WARRANT OR ORDER TO COUNTY TREASURER FOR COLLECTING BANK TAX.
(Tax Law, § 24.)

To the County Treasurer of county:

Pursuant to the authority conferred by section 24 of the Tax Law, as amended by Law 1901, chap. 559, and Law 1903, chap. 267, the board of supervisors of the county of hereby orders and directs that there be collected by you of the banks and banking associations located in

Individual banker, notice of assessment.

the several towns, villages and cities in the county of the amount of tax levied by this board upon such banks and banking associations, and that such sums when so collected be paid by you, less your commission of one per centum to be deducted for collecting and paying out such moneys, to the proper officers in the several tax districts of the county of

The number of share of bank stock assessable in each town, city, village and school district, the assessable value of such shares, the amount of taxes levied upon each bank and banking association therein, the tax rate of each of such tax districts for the year, and the proportion of the tax to which each of such tax districts is entitled under the provisions of such section 24 of the Tax Law as amended, will appear from the following statement:

Town of		No. of	Assessable	Amount
Bank:		shares.	value.	of tax.
Wilbur National Bank		3,000	\$450,000	\$4,500
Tax rate for town of.....				.005
Tax rate for village of.....				.01
Tax rate for school district No., town of.....				.005
Total tax rate02
There shall be paid to the town of.....				\$1.125
to the village of.....				2.250
to school district No. 11 of the town of...				1.125

(Insert other towns in the same manner.)

For the payment of the above sums to the proper officers of such tax districts this shall be your sufficient warrant.

Signed Board of Supervisors of county.
Chairman,
Clerk.

§ 116. Individual banker, how assessed.—Every individual banker before the fifteenth day of June under oath to the assessors of the tax district in which any of the capital invested in such banking business is taxable, the amount of capital invested in such banking business in such tax district on the first day of June preceding. Such capital shall be assessed as personal property to the banker in whose name such business is carried on.

Tax Law, §

§ 117. Notice of assessment to bank or banking association.—The assessors of every tax district shall within ten days after they have completed the assessment of the stock of a bank or banking association, give written notice to such bank or banking association of such assessment of the shares of its respective shareholders and no personal or other notice to such shareholders of such assessment is required.

Tax Law, § 26; 3 R. S. 3099.

Reports of corporations.

FORM OF NOTICE.—

To the bank:
In pursuance of section 26 of the Tax Law, you are hereby notified that the shareholders of your bank are assessed on the assessment-rolls for the of, at the several amounts set opposite their respective names, as follows:

Name.	No. of shares.	Amount assessed.
John Jones.....	100	\$5000
Richard Richardson.....	30	1500
(and so on).		
Dated at, N. Y., this.....day of.....190.		
	
	
	
	Assessors.	

§ 118. **Reports of corporations.**—The president or other proper officer of every moneyed or stock corporation deriving an income or profit from its capital or otherwise shall, on or before June fifteenth, deliver to one of the assessors of the tax district in which the company is liable to be taxed and, if such tax district is in a county embracing a portion of the forest preserve, to the comptroller of the State, a written statement specifying:

1. The real property, if any, owned by such company, the tax district in which the same is situated and, unless a railroad corporation, the sums actually paid therefor.
2. The capital stock actually paid in and secured to be paid in exception therefrom the sums paid for real property and the amount of such capital stock held by the State and by any incorporated literary or charitable institution; and
3. The tax district in which the principal office of the company is situated, or in case it has no principal office, the tax district in which its operations are carried on.

Such statement shall be verified by the officer making the same to the effect that it is in all respects just and true. If such statement is not made within twenty days after the fifteenth day of June, or is insufficient, evasive or defective, the assessors may compel the corporation to make a proper statement by mandamus.

Tax Law, § 27.

When the corporation does not deliver the statement above required the assessors may ascertain by the best means available the value of the capital and surplus of the corporation to be the sum stated in the assessment roll and a corporation which fails to appear on grievance day or institute certiorari proceeding to review as provided by Tax Law, § 250, will not thereafter be permitted to question the assessment as made.

In re Adler Bros. Co., 76 A. D. 571, aff'd 174 N. Y. 287; People v. Com'rs, etc., 99 N. Y. 254.

Penalty for omission; corporations, how assessed.

When such corporation furnishes a full and complete statement of its assets and liabilities together with a balance sheet supporting such statement in absence of other evidence the assessors are bound to make such statement a basis for their assessment against such corporation.

People v. Feitner, 41 A. D. 571.

§ 119. **Penalty for omission to make statement.**—In case of neglect to furnish such statements within thirty days after the time above provided, the company so neglecting shall forfeit to the people of this State for each statement so omitted to be furnished, the sum of two hundred and fifty dollars, and it shall be the duty of the attorney-general to prosecute for such penalty upon information which shall be furnished him by the comptroller. Upon such statement being furnished and the costs of the suit being paid, the comptroller, if he shall be satisfied that such omission was not willful, may, in his discretion, discontinue such suit.

Tax Law, § 28.

§ 120. **Corporations, how assessed.**—The assessors shall assess corporations liable to taxation in their respective tax districts upon their assessment rolls in the following manner:

1. In the first column the name of each corporation, and under its name the amount of its capital stock paid in and secured to be paid in; the amount paid by it for real property then owned by it wherever situated; the amount of all surplus profits or reserve funds exceeding ten per centum of their capital, after deducting therefrom the amount of said real property and the amount of its stock, if any, belonging to the state and to incorporated literary and charitable institutions.

2. In the second column the quantity of real property except special franchises owned by such corporation and situated within their tax district.

3. In the third column the actual value of such real property, except special franchises.

4. In the fourth column the amount of the capital stock paid in and secured to be paid in and of all such surplus profits or reserve funds as aforesaid, after deducting the sums paid out for all the real estate of the company, wherever the same may be situated, and then belonging to it, and the amount of stock, if any, belonging to the people of the state and to incorporated literary and charitable institutions.

5. In the fifth column the value of any special franchise owned by it as fixed by the state board of tax commissioners.

Assessors to apportion valuation between school districts.

Tax Law, § 31, as am'd by chap. 712, Laws 1899, took effect October 1, 1899.

The assessment of railroads should be limited to the cost of re-production of that portion which is in the town.

People v. D. L. & W., 152 N. Y. 490.

It must be borne in mind that all the assessors have to deal with is the real estate of the company in their town. They have nothing to do with the personal property which is assessed at the place where the principal office of the corporation is. They have nothing to do with the value of the franchises of the corporation since they are now taxed under chapter 361, Laws of 1881, § 3.

Where assessors have jurisdiction over all the property of the corporation either in the state, whether it is real estate, capital stock or franchises, they may deal with every element of value that constitutes the property of the corporation or enters into its earning or producing capacity, but in most cases in this state the assessors have jurisdiction only over a part of the corporate property, that is, the real estate, and in making the assessment of the real estate they should make such assessment without regard to the earnings of the corporation as the earnings include earnings of the personal property as well as the real estate and includes the use of franchises and the profits of operation may in many cases be attributed to the skill or ability of the management.

The cost of reproducing the miles of road through the town or tax district is the just and reasonable rule of valuation. There is no reason for assessing the property at a greater sum than the cost of replacement, that is, construct the roadbed, put down the ties and rails and erect the buildings and other structures all new. The assessors are not bound by the estimate of the cost of reproduction given by the railroad or its agents, they may inquire into that question themselves and in their own way. On the other hand they have no right to disregard uncontradicted proof.

People v. Clapp, 152 N. Y. 490, 492, 493, 494.

As to capital stock, see § 1342.

As to special franchises, see § 1341.

§ 121. Assessors to apportion valuation of railroad, telegraph, telephone, or pipe-line companies between school districts.—The assessors of each town in which a railroad, telegraph, telephone or pipe-line company is assessed upon property lying in more than one school district therein, shall within fifteen days after the final completion of the roll, apportion the assessed valuation of the property of each such corporation among such school districts. Such apportionment shall be signed by the assessors or a majority of them, and be filed with the town clerk within five days thereafter, and thereupon the valuation so fixed shall become the valuation of such property in such school district for the purpose of taxation. In case of failure of the assessors to act, the supervisor of the town shall make such apportionment on request of either of the trustees of any school district or of the corporation assessed. The town clerk shall furnish the trustees a certified statement of the valuations apportioned to their respective dis-

Franchise tax.

tricts. In case of any alteration in any school district affecting the valuation of such property, the officer making the same shall fix and determine the valuations in the districts affected for the current year.

Tax Law, § 39.

§ 122. **Franchise tax on corporations.**—For the privilege of doing business or exercising its corporate franchises in this state every corporation, joint-stock company or association, doing business in this state, shall pay to the state treasurer annually, in advance, an annual tax to be computed upon the basis of the amount of its capital stock, employed during the preceding year within this state, and upon each dollar of such amount. The measure of the amount of capital stock employed in this state shall be such a portion of the issued capital stock as the gross assets employed in any business within this state bear to the gross assets wherever employed in business. For purposes of taxation, the capital of a corporation invested in the stock of another corporation shall be deemed to be assets located where the physical property represented by such stock is located. If the dividends upon the capital stock amount to six, or more than six per centum upon the par value of the capital stock, during any year ending with the thirty-first day of October, the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the par value of the capital stock during said year. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

(1) The assets do not exceed the liabilities, exclusive of capital stock, or

(2) The average price at which such stock sold during said year, did not equal or exceed its par value, or

(3) If no dividend was declared,

Then each dollars of the amount of capital stock employed in this state, determined as hereinbefore provided, shall be taxed at the rate of three-fourths of one mill. If such dividend or dividends amount to less than six per centum on the par value of the capital stock, and

(1) The assets exceed the liabilities, exclusive of capital stock, by an amount equal to or greater than the par value of the capital stock, or

Corporations exempt.

(2) The average price at which such stock sold during said year is equal to or greater than the par value,

Then the amount of capital stock, determined as hereinbefore provided to be employed in this state, shall be taxed at the rate of one and one-half mills on each dollar of the valuation of the capital stock employed in this state, but such valuation shall not be less than

(1) The par value of such stock,

(2) The difference between the assets and liabilities, exclusive of capital stock,

(3) The average price at which such stock sold during said year.

If such corporation, joint-stock company or association shall have more than one kind of capital stock, and upon one of such kinds of stock a dividend or dividends amounting to six, or more than six per centum upon the par value thereof, has been made or declared, and upon the other no dividend has been made or declared, or the dividend or dividends made or declared thereon amount to less than six per centum upon the par value thereof, then the tax shall be at the rate of one-quarter of a mill for each one per centum of dividends made or declared upon the capital stock upon the par value of which the dividend or dividends made or declared amount to six or more than six per centum, and in addition thereto a tax shall be charged upon the capital stock.

(1) Upon which no dividend was made or declared, or

(2) Upon which the dividend or dividends made or declared did not amount to six per centum on the par value,

At the rate as hereinbefore provided for the taxation of capital stock upon which no dividend was made or declared, or upon which the dividend or dividends made or declared did not amount to six per centum on the par value.

Tax Law, § 182, as am'd by Laws 1901, chap. 558, and Laws 1906, chap. 474.

In determining the corporation franchise tax under sections 182 and 190 of the Tax Law the actual and not the par value of the capital stock employed in this state must be taken as the basis of computation.

People v. Knight, 173 N. Y. 255.

§ 123. **Certain corporations exempt from tax on capital stock.**—Banks, saving banks, institutions for savings, title guaranty, insurance or surety corporations, every trust company incorporated, organized or formed, under, by or pursuant to a law of this state,

Additional tax on transportation companies.

and any company authorized to do a trust company business, solely or in connection with any other business, under a general or special law of this state, laundry corporations, manufacturing corporations to the extent only of the capital actually employed in this state in manufacturing, and in the sale of the product of such manufacturing, mining corporations wholly engaged in mining ores within this state, agricultural and horticultural societies or associations, and corporations, joint-stock companies or associations owning or operating elevated railroads or surface railroads not operated by steam, or formed for supplying water or gas for electric or steam heating, lighting or power purposes, and liable to a tax under sections one hundred and eighty-five and one hundred and eighty-six of this chapter, shall be exempt from the payment of the taxes prescribed by section one hundred and eighty-two of this chapter. But such a laundrying* manufacturing or mining corporation shall not be exempted from the payment of such tax, unless at least forty per centum of the capital stock of such corporation is invested in property in this state and used by it in its laundrying*, manufacturing or mining business in this state.

Tax Law, § 183, as am'd by Laws 1901, chap. 558, and Laws 1906, chap. 474.

§ 124. **Additional franchise tax on transportation and transmission corporations and associations.**—Every corporation and joint-stock association formed for steam surface railroad, canal, steamboat, ferry, express, navigation, pipe-line, transfer, baggage express, telegraph, telephone, palace car or sleeping car purposes, and all other transportation corporations not liable to taxes under sections one hundred and eighty-five or one hundred and eighty-six of this chapter shall pay for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual excise tax or license fee which shall be equal to five-tenths of one per centum upon its gross earnings within the state, which shall include its gross earnings from its transportation or transmission business originating and terminating within this state, but shall not include earnings derived from business of an interstate character. All settlement for such taxes heretofore based by the comptroller upon gross earnings, excluding earnings from interstate business, have been ratified and confirmed, except that the accounts for taxation under section

Franchise tax.

six of chapter three hundred and sixty-one of the laws of eighteen hundred and eighty-one, for the years eighteen hundred and ninety-two and eighteen hundred and ninety-three, shall be settled and adjusted by the comptroller by excluding the earnings of an interstate character as provided by this section.

Tax Law, § 184.

§ 125. **Franchise tax on elevated or surface railroads not operated by steam.**—Every corporation, joint-stock company or association owning or operating any elevated railroad or surface railroad not operated by steam shall pay to the state for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity within this state, an annual tax which shall be one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association. Any such railroad corporation whose property is leased to another railroad corporation shall only be required under this section to pay a tax of three per centum upon the dividends declared and paid in excess of four per centum upon the amount of its capital stock.

Tax Law, § 185; 3 R. S. 3136, as am'd by Laws 1906, chap. 474, in effect Oct. 31, 1906.

§ 126. **Franchise tax on water-works companies, gas companies, electric or steam heating, lighting or power companies.**—Every corporation, joint-stock company or association formed for supplying water or gas, or for electric or steam heating, lighting or power purposes, shall pay to the state for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this state, an annual tax which shall be five-tenths of one per centum upon its gross earnings from all sources within this state, and three per centum upon the amount of dividends declared or paid in excess of four per centum upon the actual amount of paid-up capital employed by such corporation, joint-stock company or association.

Tax Law, § 186.

§ 127. **Franchise tax on insurance corporations.**—An annual state tax for the privileges of exercising corporate franchises or for carrying on business in their corporate or organized capacity

Franchise tax.

within this state equal to one per centum on the gross amount of premiums received during the preceding calendar year for business done at any time in this state, which gross amount of premiums shall include all premiums received during such preceding calendar year on all policies, certificates, renewals, policies subsequently cancelled, insurance and re-insurance during such preceding calendar year, and all premiums that are received during such preceding calendar year on all policies, certificates, renewals, policies subsequently cancelled, insurance and reinsurance executed, issued or delivered in all years prior to such preceding calendar year, whether such premiums were in the form of money, notes, credits, or any other substitute for money, shall be paid annually into the treasury of the state, in the year nineteen hundred and five on or before July first, and in all subsequent years, on or before the first day of June by the following corporations:

1. Every domestic insurance corporation, incorporated, organized or formed under, by or pursuant to a general or special law;

2. Every insurance corporation, incorporated, organized or formed under, by, or pursuant to the laws of any other state of the United States, and doing business in this state, except a corporation doing a fire insurance business or a marine insurance business;

3. Every insurance corporation, incorporated, organized or formed under, by, or pursuant to the laws of any state without the United States, or for any foreign country, except such a corporation doing a life, health or casualty insurance business, and doing business in this state; but the tax on gross premiums of a corporation so incorporated, organized or formed and doing a fire or marine insurance business within the state shall be equal to five-tenths of one per centum. This section does not apply to a fraternal beneficiary society, order or association, a corporation for the insurance of domestic animals, a town or county co-operative insurance corporation, nor to any corporation subject to the supervision of or required by or in pursuance of law to report to the superintendent of banks; but this section does apply to an individual, or partnership, or association of underwriters known as Lloyds in so far as corporations doing the same kind of insurance business are subject to its provisions. The taxes imposed by this section shall be in addition to all other fees, licenses or taxes imposed by this or any other law, except that in assessing

Franchise tax.

taxes under the reciprocal provisions of section thirty-three of chapter thirty-eight of the general laws, credit shall be allowed for any taxes paid under this section. The term insurance corporations as used in this article, shall include a corporation, association, joint stock company or association, person, society, aggregation or co-partnership by whatever name known doing an insurance business in this state.

Insurance corporations.—Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this chapter, shall, on or before March first in each year, except in the year nineteen hundred and five and on or before the first of April in that year, make a written report to the comptroller of its condition at the close of its business on December thirty-first preceding stating the gross amount of all premiums, referred to in section one hundred and eighty-seven of this chapter, received during the preceding calendar year on business done thereby this state during the year ending with such day and at all times prior thereto, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

Tax Law, § 187, as am'd by Laws 1905, chap. 94.

§ 128. **Franchise tax on trust companies.**—Every trust company incorporated, organized or formed under, by or pursuant to a law of this state, and any company authorized to do a trust company business solely or in connection with any other business, under a general or special law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the amount of its capital stock, surplus and undivided profits.

Tax Law, § 187a, added by Laws 1901, chap. 132.

§ 129. **Franchise tax on savings banks.**—Every savings bank incorporated, organized or formed under, by or pursuant to a law of this state, shall pay to the state annually for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity, an annual tax which shall be equal to one per centum on the par value of its surplus, and undivided earnings.

Tax Law, § 187b, added by Laws 1901, chap. 117.

§ 130. **Tax upon foreign bankers.**—Every foreign banker do-

Exemption from other taxation.

ing a business in this state, shall annually pay to the treasurer a tax of five per centum on the amount of interest or compensation of any kind earned and collected by him on money loaned used or employed in this state by such banker. The term, doing a banking business, as used in this section, means doing such business as a corporation may be created to do under article two of the banking law, or doing any business which a corporation is authorized by such article to do. The term, foreign banker doing a banking business in this state, as used in this section, includes:

1. Every foreign corporation doing a banking business in this state, except a national bank.

2. Every unincorporated company, partnership or association of two or more individuals, organized under or pursuant to the laws of another state or country, doing a banking business in this state.

3. Every other unincorporated company, partnership, or association, of two or more individuals, doing a banking business in this state, if the members thereof, owning more than a majority interest therein, or entitled to more than one-half of the profits thereof, or who would, if it were dissolved, be entitled to more than one-half of the net assets thereof, are not residents of this state.

4. Every nonresident of this state, doing a banking business in this state, in his own name and right only.

Tax Law, § 188, as am'd by chap. 500, Laws 1900.

§ 131. **Exemptions from other state taxation.**—The personal property of every corporation, company, association or partnership, taxable under this article, other than for an organization tax, shall be exempt from assessment and taxation upon its personal property for state purposes, and the personal property of every corporation taxable under section one hundred and eighty-seven-a of this article, other than for an organization tax, and as provided in chapter thirty-seven of the general laws, shall be exempt from assessment and taxation for all other purposes, if all taxes due and payable under this article have been paid thereby. The personal property of a private or individual banker, actually employed in his business as such banker, shall be exempt from taxation for state purposes, if such private or individual banker shall have paid all taxes due and payable under this article. Such

County clerks to furnish data.

corporation and private or individual banker shall in no other respect be relieved from assessment and taxation by reason of the provisions of this article. The owner and holder of stock in an incorporated trust company liable to taxation under the provisions of this act shall not be taxed as an individual for such stock.

Tax Law, § 202, as am'd by Laws 1901, chap. 132; Laws 1902, chap. 172.

Corporations are entitled to same exemptions of property for taxation as individuals.

People v. Comrs., 23 N. Y. 192.

§ 132. **County Clerks to furnish data respecting corporations.**—Between the first and fifteenth days of June in the year nineteen hundred and six, the county clerk in each county of the state, excepting counties containing a city of the second class and counties wholly situate within the corporate limits of a city, shall prepare from the records in his office and mail to each of the town clerks in his said county, a certified statement containing the names of every stock corporation, incorporated within the five years next preceding the first day of June, nineteen hundred and six, whose principal business office or chief place of business is designated in its certificate of incorporation as being in such town or in any village or hamlet therein, together with the fact of such designation and the names and addresses of the directors of each such corporation so far as said county clerk can discover the same from the certificate of incorporation or from the latest certificate of election of directors of such corporation filed in his office. Annually thereafter, between the first and fifteenth days of June, said county clerk shall furnish to such town clerks the several statements aforesaid containing the above facts with reference to stock corporations whose certificates of incorporation have been filed with him since his last preceding annual statements to said several town clerks. Each town clerk receiving such statement shall forthwith file the same in his office and mail a notice of such filing to each of the assessors of his town.

Tax Law, § 28a, added by Laws 1906, chap. 425.

CHAPTER SIX.

FENCE VIEWERS, ETC.

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| §133. Fence viewers and other duties of assessors. | §159. Villages and cities deemed towns. |
| §134. Apportionment of division fence. | §160. Damages for inanimate goods. |
| §135. When lands may lie open. | §161. Penalty for conversion of floating lumber. |
| §136. Division fences on change of title. | §162. Recovery of wrecked property. |
| §137. Settlement of disputes. | §163. Powers and duties of sheriffs, coroners and wreck masters. |
| §138. Powers of fence viewers. | §164. Sale of wreck. |
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| §140. Fence destroyed by accident. | §166. Claimant's undertaking. |
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§ 133. **Fence viewers, who are.**—The fence viewers in towns are the assessors and commissioners of highways.

Town Law, § 21; 3 R. S. 3206.

For certain purposes hereinafter enumerated the fence viewers in villages are the trustees of the village, and in cities the aldermen of the city.

Town Law, § 134; 3 R. S. 3227. See § 445.

§ 134. **Apportionment of division fence.**—Each owner of two adjoining tracts of land, except when they otherwise agree, shall make and maintain a just and equitable portion of the division

Apportionment of division fence.

fence between such lands, unless one of such owners shall choose to let his lands lie open to the use of all animals which may be lawfully upon the other's lands, and does not permit any animals lawfully upon his premises to go upon lands so lying open. When the adjoining lands shall border upon any of the navigable lakes, streams or rivers of the State, the owners of the lands shall make and maintain the division fence between them down to the line of low-water mark, in such lakes, streams, or rivers, except those lands which overflow annually so as to be so submerged with water that no permanent fence can be kept thereon, and known as low flat lands, and when adjoining lands shall be bounded by a line between the banks of streams of water not navigable, and the owners or occupants thereof cannot agree upon the manner in which the division fence between them shall be maintained, the fence viewers of the town shall direct upon which bank of the stream, and where the division fence shall be located, and the portion to be kept and maintained by each adjoining owner.

Town Law, § 100, as am'd by Laws 1892, chap. 92; 3 R. S. 3221.

The statute applies to cases where lands have been but partially fenced, as well as to those in which the owner chooses to let his land lie altogether open.

Chrysler v. Westfall, 41 Barb. 159.

One occupying the land as tenant at will or sufferance is entitled to the benefit of the statute. The statute is for the benefit of occupants without respect to the particular estate enjoyed. Such occupant may maintain an action for expenses of repairing, etc.

Bronk v. Becker, 17 Wend 320.

The duty of each owner to make and keep his part of the fence carries with it the right of such necessary occupation on the other side as is for the time being necessary for the purpose.

Carpenter v. Halsey, 60 Barb. 45; *affd.*, 57 N. Y. 657.

The rule requiring each party to build a just and equal portion of the fence does not necessarily mean one-half of it, but an equal portion with reference to costs of building and maintaining.

People v. Dewey, 1 Hun, 259.

No one but an adjoining owner or possessor has any interest in another's duty or obligation to build or maintain a division fence, though omission to do so results in injury to a third person or his property. No cause of action exists in favor of such third person.

Stafford v. Ingersoll, 3 Hill, 38; *Ryan v. R. S. R. R.*, 9 How. 453.

When a person chooses to let his land "lie open to a public common," he must do what amounts to a license to the people of the town to go upon it and allow their cattle to feed upon it without being trespassers until he revokes such license or pays the expense of building his just proportion of the fence, and before he can claim that he has chosen to let his land lie open to a public common he must give adjoining owners or fence viewers notice of that

When lands may lie open.

fact when called upon to build his part of the fence, else he is liable to the adjoining owner for the expense of building his proportion.

Perkins v. Perkins, 44 Barb. 134.

The Railroad Law provides that a sufficient post and wire fence of requisite height shall be deemed a lawful fence but barbed wire shall not be used in its construction. This applies to the fences along the railroad, to be build by the railroad.

Railroad Law, § 32, as am'd by chap. 676, Laws 1892; 3 R. S. 2534.

The statutes contemplate the building and maintaining of partition fences by both parties in just proportion. Before a division of the fence and an assignment of a distinct portion to each party to build or maintain, either by fence viewers or otherwise, the duty of maintaining every portion of the fence rests equally upon both parties and either party can allege neglect on the part of the other. After a division or assignment by the fence viewers then the owner is only required to care for that portion which is assigned to

12 Am. & Eng. Ency. of Law, 1053, 2nd ed.

Though the statute provides the manner in which the fences shall be built, yet the parties may waive the statute and build according to agreement.

12 Am. & Eng. Ency. of Law, 1048, 2nd ed.

The statutes require partition fences between such lands only as are inclosed, occupied or improved and only where such occupation or improvement extends up to the line between the adjacent lands.

12 Am. & Eng. Ency. of Law, 1050, 2nd ed.

Partition fences as contemplated by the statutes must be built upon the line between the adjoining owners, not wholly upon the land of one and parallel to the dividing line.

Crooked, Virginia or worm fences have been held to be within these requirements, the center of the line of rails being considered the line of the fence and the dividing line between the adjoining lands.

12 Am. & Eng. Ency. of Law, 1052, 2nd ed.

§ 135. **When lands may lie open.**—When the owner of any lands shall choose to let them lie open, he shall serve upon the owners of the adjoining lands a written notice to that effect, and thereafter the owners of such adjoining lands shall not be liable in any action or proceedings for any damages done by animals lawfully upon their premises going upon the lands so lying open or upon any other lands of the owner thereof through such lands so lying open. The owner of any lands so lying open may have the same inclosed, by giving written notice to that effect to the owners or occupants of the adjoining lands, and shall refund to such owners or occupants a just proportion of the value of any division fence made and maintained by them, or if no fence has been so made or maintained upon the line or any part of it, he shall build and maintain his proportion of such division fence.

Town Law, § 101; 3 R. S. 3221. See forms below.

This notice must be given, otherwise he will be liable to the adjoining owner for the expense of building his proportion of the division fence.

Perkins v. Perkins, 44 Barb. 134.

Division fences.

The fact that an owner has never fenced his land and has only used it for a sugar bush and as a wood and timber lot, will not establish that he has elected to let the same lie open as a public common.

Perkins v. Perkins, 44 Barb. 134.

A division line fence is not legally required to be built of any particular height or size or of any particular materials or particular size; but it must be so built as to size, height, character and kind of materials that it will be proper and suitable for all the purposes of such fence and will be reasonably safe and not necessarily cause injury to the property or animals of the adjoining owner.

Rowland v. Baird, 18 Abb. N. C. 256.

The plaintiff removed a portion of the line fence between him and defendants and notified defendants that he had done so and to remove his cattle, which defendant did not do, but shortly after removed the remainder of the fence. Under such circumstances the defendant was liable for damage done by his cattle to plaintiff's fields after the fence was removed.

Van Slyck v. Snell, 6 Lans 299.

Where one owner chooses to let his land or part of it lie in common he may do so and be relieved of the obligation to contribute to the partition fence except as to so much of it, if any, as he has occasion for.

12 Am. & Eng. Ency. of Law, 1051, 2nd ed.

Though the land has been inclosed and improved and an assignment has been made of portions of a partition fence, the owner may yet elect to lay his land or part of it in common, in which case the owner may have a new division of the fence along the land not laid in common.

12 Am. & Eng. Ency. of Law, 1051, 2nd ed.

NOTICE BY OWNER OF LANDS TO ADJOINING OWNER THAT HE DESIRES TO HAVE THEM LIE OPEN.

To E. D.

You are hereby notified, pursuant to statute, that I choose to let the lands owned (and occupied) by me, in the town of, in the county of, adjoining your lands, lie open and unfenced.

Dated, 190..

Yours, etc.,

A. B.

NOTICE BY OWNER OF LANDS TO ADJOINING OWNER THAT HE DESIRES TO HAVE HIS LANDS LYING OPEN, INCLOSED.

You are hereby notified that I intend to have the lands owned (and occupied) by me, in the town of, in the county of, adjoining your lands, and now lying open, inclosed, and that I will refund to you a just proportion of the value of the division fence made and maintained by you between said lots (or, will build and maintain my proportion of a division fence between said lots).

Dated, 190..

Yours, etc.,

A. B.

§ 136. **Division fences on change of title.**—Whenever a subdivision, or new apportionment of any division fence become necessary by reason of transfer of the title of either of the adjoining owners to the whole or any portion of the adjoining lands, by conveyance, devise or descent, such subdivision or new apportionment shall thereupon be made by the adjoining owners affected

Settlement of disputes.

thereby; and either adjoining owner shall refund to the other a just proportion of the value at the time of such transfer of title, of any division fence that shall theretofore have been made and maintained by such other adjoining owner, or the person from whom he derived his title, or he shall build his proportion of such division fence. The value of any fence, and the proportion thereof to be paid by any person, and the proportion to be built by him, shall be determined by any two of the fence viewers of the town, in case of disagreement.

Town Law, § 102; 3 R. S. 3222.

See form below.

DECISION OF FENCE VIEWERS UPON SUBDIVISION OR NEW APPORTIONMENT OF DIVISION FENCE, BY REASON OF TRANSFER OF TITLE.

COUNTY OF..... }
TOWN OF..... } ss.:

Whereas, A. B. and C. B. have become owners of adjoining lots, situated in said town of, by reason of the transfer of title to them, respectively, of said lots, by M. M. and O. F. (or, recite other facts). And whereas, the said owners have disagreed as to the value of the division fence between said lots, and the proportion thereof to be paid by the said A. B. (or, as to the proportion of the division fence between their said lots, to be built and kept in repair by them, respectively):

Now, therefore, we the subscribers two of the fence viewers of said town, do hereby certify, that upon the application of said owners, we have examined the premises, and have heard their allegations, after due notice to them, and the due deliberation having been had thereon, we find and determine that the value of the division fence between the said lots is the sum of dollars, and that the proportion thereof to be paid by said A. B. is the sum of dollars (or, that the (one-half) part of said fence, at the end thereof, is the proportion thereof to be built and kept in repair by said A. B. and that the remainder of said fence is the proportion thereof to be built and kept in repair by said C. B.). Said fence is described as follows, to wit: (Describe same.)

And we further certify that our fees for said services herein amount to the sum of dollars.

IN WITNESS whereof, we have hereunto set our hands this..... day of....., 190..

I. H.,
J. M.,
Fence Viewers.

§ 137. Settlement of disputes.—If disputes arise between the owners of adjoining lands, concerning the liability of either party to make or maintain any division fence, or the proportion or particular part of the fence to be made or maintained by either of them, such dispute shall be settled by any two of the fence viewers of the town, one of whom shall be chosen by each party; and if either neglect, after eight days' notice, to make such choice, the other party may select both. The fence viewers, in all matters

Powers.

heard by them, shall see that all interested parties have had reasonable notice thereof, and shall examine the premises and hear the allegations of the parties. If they cannot agree, they shall select another fence viewer to act with them, and the decision of any two shall be reduced to writing, and contain a description of the fence, and the proportion to be maintained by each, and shall be forthwith filed in the office of the town clerk, and shall be final upon the parties to such dispute, and all parties holding under them.

Town Law, § 103. See form below.

CERTIFICATE OF FENCE VIEWERS IN CASE OF DISAGREEMENT
BETWEEN ADJOINING OWNERS AS TO DIVISION FENCE.

COUNTY OF..... } ss.:
TOWN OF..... }

Whereas, A. F. and C. B., being owners of adjoining lands situated in said town, and having disagreed as to the portions of a division fence to be made (or, kept in repair) by them respectively between said lands.

Now, therefore, we the subscribers, two of the fence viewers of said town, do hereby certify that upon the application of said owners we have examined the premises and have heard their allegations, after due notice to them, and that due deliberation having been had thereon, we do determine that said division fence be built as follows, viz.: (describe same), and that the (one-half) part of said fence, at the end thereof, is the proper proportion thereof to be built (or, to be put and kept in repair) by the said A. F., and that the remainder of said fence is the proper proportion thereof to be built (or, to be put and kept in repair) by the said C. B.

And we further certify that our fees for said services herein amount to the sum of dollars.

In witness whereof, we have hereunto set our hands this day of
....., 190..

I. H.,
J. M.,
Fence Viewers.

§ 138. **Powers of fence viewers.**—Witnesses may be examined by the fence viewers on all questions submitted to them; and either of such fence viewers may issue subpoenas for witnesses, who shall receive the same fees as witnesses in a justice's court. Each fence viewer thus employed shall be entitled to one dollar and fifty cents per diem. The party refusing or neglecting to pay the fence viewers, or either of them, shall be liable to an action for the same, with costs.

Town Law, § 104.

The only disputes which fence viewers are empowered to settle are such as respect the proportion or particular part of the fence which is to be maintained or made by the respective owners of adjoining lands. * * *

The statute empowering viewers to fix the just proportion to be maintained

Neglect to make or repair division fence.

refers to the state of things existing when they are called upon to act and has no relation to any former ownership of the adjoining possession.

Adams v. Van Alstyne, 25 N. Y. 232.

Id.

H. and W. were owners of adjoining lands. W. built a division fence; H. letting his land lie open. Afterward H. inclosed his land and a disagreement arose between them, not as to the proportion of the fence each had to maintain, but as to the value of it and how much H. should pay W. Held, that the fence viewers had jurisdiction, and as no question was submitted to them as to the proportion of the fence to be paid for by H., their decision stating the value of the fence and the sum to be paid by H. was a sufficient compliance with the statute.

Hewitt v. Watkins, 11 Barb. 409.

The decision of the fence viewers as to the proportion of fence to be built by each owner is not requisite if there is no dispute between them on that point, in order to recover for the expense of building the fence so left in a defective condition.

Willoughby v. Carleton, 9 J. 136; Burger v. Kortright, 4 id. 414; Bronk v. Becker, 17 W. 320.

The decision of fence viewers should be reduced to writing and filed with town clerk. It should specify the sum one party is to pay to the other if the dispute is as to the value of the fence; if the dispute is as to the proportion to be maintained by each, it should specify that.

They should dispose of the matters submitted to them over which they have jurisdiction.

Hewitt v. Watkins, 11 Barb. 409.

The statutory provisions for the establishment of a partition fence and the assignment of portions by fence viewers appointed for the purpose has reference only to cases where the parties cannot or did not agree upon a division of the fence. A division of the fence by agreement is of the same force and effect as a division by the fence viewers.

12 Am. & Eng. Enc. of Law, 1047.

If fence viewers exceed their authority and jurisdiction or fail to comply with the statute in any essential particular their proceedings are void, but as to matters within their jurisdiction their determination is final and conclusive.

12 Am. & Eng. Enc. of Law, 1056.

§ 139. **Neglect to make or repair division fence.**—If any person who is liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall be liable to pay the party injured all such damages as shall accrue thereby, to be ascertained and appraised by any two fence viewers of the town, and to be recovered with costs. The appraisement shall be reduced to writing, and signed by the fence viewers making it. If such neglect or refusal shall be continued for the period of one month after request in writing to make or repair the fence, the party injured may make or repair

Fence destroyed by accident.

the same, at the expense of the party so neglecting or refusing, to be recovered from him, with costs.

Town Law, § 105; 3 R. S. 3222. See form below.

After the duty to maintain a specific portion of the fence devolves upon each of the adjoining owners as a result of a division by agreement or statute, one who neglects to keep in repair his portion is liable for the trespass of his own cattle by reason of a defective fence and is without remedy for damages happening to himself through the trespass of his neighbor's cattle. He cannot escape liability because of the fact that the other owner was also negligent in keeping his part in repair.

12 Am. & Eng. Enc. of Law, 1057.

REQUEST OF ADJOINING PROPERTY OWNER TO MAKE OR REPAIR
DIVISION FENCE.

To M. E.

You are hereby notified and requested, pursuant to statute, to make (or, to put in repair) your proportion of the division fence between the land of the undersigned and your adjoining land in the town of, in the county of, or in case of your failure so to do, the undersigned will make (or, repair) the same, at your expense.

Dated, 190..

Yours, etc.,

F. P.

§ 140. Fence destroyed by accident.—Whenever a division fence shall be injured or destroyed by floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be so required by any person interested therein. Such requisition shall be in writing, and signed by the party making it. If the person so notified shall refuse or neglect to make or repair his proportion of such fence, for the space of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered from him, with costs.

Town Law, § 106; 3 R. S. 3223. See form below.

FORM.

REQUEST, BY ADJOINING OWNER, TO PUT IN REPAIR DIVISION
FENCE INJURED OR DESTROYED BY FLOODS OR
OTHER CASUALTY.

To M. E.

You are hereby notified and required, pursuant to law, to make (or, repair), within ten days after the service of this notice upon you (your just proportion of) the division fence between the lands of the undersigned and your adjoining lands, in the town of, in the county of, which fence has been destroyed (or, injured) by a flood (or, name other casualty), and that in case of your refusal (or, neglect) so to do, I, the undersigned, will make and repair the same at your expense, fees and costs made thereon.

Dated, 190..

Yours, etc.,

F. P.

Damages.

§ 141. **Damages for insufficient fence.**—Whenever the electors of any town shall have made any rule or regulation, prescribing what shall be deemed a sufficient division fence in such town, any person who shall thereafter neglect to keep a fence according to such rule or regulation shall be precluded from recovering compensation, for damages done by any beast lawfully kept upon the adjoining lands that may enter therefrom on any lands of such person, not fenced in conformity to the said rule or regulation, through any such defective fence. When the sufficiency of a fence shall come in question in any action, it shall be presumed to have been sufficient until the contrary be established.

Town Law, § 107.

The sufficiency of a fence is to be determined by its capacity to prevent the breaking through of ordinary animals or animals not breachy.

12 Am. & Eng. Enc. of Law, 1038, 2nd ed.

The law obliges one who builds and maintains a fence to do so in a manner not unreasonably dangerous to persons and animals that might rightfully approach it and come in contact with it.

12 Am. & Eng. Enc. of Law, 1039, 2nd ed.

A person has no right to turn or drive cattle upon uninclosed or insufficiently fenced lands of another, and if he does so it is a trespass for which the owner of the land may recover.

If animals enter upon lands whether fenced or not the owner of the land, though he may not recover unless his land is fenced as required, may turn them into the place from which they came, and in so doing may use such means as a prudent man would naturally resort to, using reasonable care not to injure the animals.

12 Am. & Eng. Enc. of Law, 1045, 2nd ed.

The obligation to build and maintain partition fences may exist by force of agreement as well as being imposed by statute.

12 Am. & Eng. Enc. of Law, 1047, 2nd ed.

One who is bound to maintain a partition fence and fails to do so is liable for all legal and natural consequences of his neglect.

12 Am. & Eng. Enc. of Law, 1056, 2nd ed.

On the default of the owner to build or take care of his portion it may be taken care of by the other and the value of so doing to be determined by the fence viewers and collected from the defaulting owner.

12 Am. & Eng. Enc. of Law, 1054, 2nd ed.

§ 142. **Damages for omitting to build fence.**—If any person liable to contribute to the erection or repair of a division fence shall neglect or refuse to make and maintain his proportion of such fence, or shall permit the same to be out of repair, he shall not be allowed to have and maintain any action for damages incurred by beasts coming thereon from adjoining lands where such beasts are lawfully kept, by reason of such defective fence, but shall be

Damages.

liable to pay to the party injured all damages that shall accrue to his lands, and the crops, fruit trees and shrubbery thereon, and fixtures connected with the land, to be ascertained and appraised by any two fence viewers of the town, and to be recovered, with costs; which appraisement shall be reduced to writing and signed by the fence viewers making the same, but shall be only prima facie evidence of the amount of such damages.

Town Law, § 108.

The damage above provided for is to lands, crops, fruit, trees and shrubbery and fixtures connected with the land. It does not cover any injury that may happen to any animals by reason of insufficient fence to restrain them.

Crandall v. Eldridge, 46 Hun, 411; *Clark v. Brown*, 18 Wend 213.

If one owner suffer his part of the division fence to get out of repair and the cattle of an adjoining owner escape from his field through such defective part of the fence and cause damage to the former, he cannot recover damages, as he contributed to the injury by failing to keep his own fence in repair.

Cowles v. Bulger, 47 Barb. 562.

The rule prescribed by this statute does not apply where a railroad company neglects to maintain a fence along its road, through which animals escape from the adjoining lands on to their land.

Graham v. D. & H. C. Co., 46 Hun, 386.

A division fence is one built along the boundary line between adjoining proprietors. It is, in contemplation of law, on the true line, although it be a worm or zig-zag fence, crossing the line from side to side alternately. One may occupy the necessary land on each side of the true line for such a fence, although it incloses parts of the adjoining tracts. One proprietor may place half of a fence of reasonable dimensions on the land of the adjoining owner and he may cut half of a ditch on the land of such owner when a ditch is proper for a partition fence. If more than half the fence is built upon the land of one without his consent, he may remove the excess, and if necessary to its removal, may take it all down.

If one, by mistake, has built his fence on the other's land, he may remove it in a reasonable time after discovering his mistake.

A division fence may be established by agreement of adjacent owners, and they may respectively bind themselves to maintain particular portions of such fence, or one of them may agree to maintain the entire fence. The fact that there is a statute providing for the erection and apportionment of partition fences will not preclude the parties from controlling the matter by private agreement.

A division by verbal agreement may be recorded at any time, by application to the fence viewers, and obtaining a statutory assignment, but mere notice to the other of an intention to revoke is not sufficient.

The lessee of one owner is bound by such an agreement and cannot recover from the other, damages resulting from his cattle breaking over the part which the landlord should have kept in repair.

So one adjoining owner is not excused from paying his share of the expense of a division fence, because the line is in dispute, if there is in fact a division fence.

The design of the Fence Law was to secure a fence that would turn ordinary stock — domestic animals that were not breachy or unruly. One is not obliged to fence against such small animals as would pass through or under an ordinary fence, nor against such wild animals as would break through.

Use of barbed wire.

Neither owner can claim the statutory protection until the fence has been apportioned between them.

Until so apportioned, it is equally the duty of such to keep up every part of it. Hence, if it is defective, it is as much the fault of one as the other, and being equally at fault, neither can recover of the other on account of its condition.

Notice by the fence viewers to the adverse parties is essential to give them jurisdiction to apportion a division fence, to adjudicate upon its sufficiency, or of repairs thereto, or to appraise the value of such fence or repairs, and without such notice their proceedings are void.

7 Am. & Eng. Enc. Law, §§ 894, 897, 898, 901 and 903.

§ 143. Use of barbed wire in the construction of division fences.—Barbed wire may be used in the construction of any division fence, provided, however, that the person or corporation desiring to use such material shall first obtain from the owner of the adjoining property his written consent that it may be used. If the owner of the adjoining property refuses to consent to the building of such a fence, it may, nevertheless, be built in the following manner: The fence shall be of four strands of wire with a sufficient bar of wood at the top; and the size of such top bars and of the posts and supports of such fence and their distances apart shall be such as the fence viewers of the town may prescribe. Whenever such fence shall become so out of repair as to be unsafe, it shall be the duty of the owner or owners to individually repair the same. But any person building such a fence without the written consent of the owner of the adjoining property shall be liable to all damages that may be occasioned by reason of such fence. But this section shall not be so construed as to permit railroad corporations to use barbed wire in the construction of fences along their lines contrary to the provisions of section thirty-two of the Railroad Law.

Town Law, § 109, added by chap. 524, Laws 1896; 3 R. S. 3223.

A flat iron ribbon one-half inch wide twisted about three times in a foot with saw teeth cut on one side one and one-half inches apart is not barbed wire within the prohibition of the statute.

Stissner v. N. Y. C. & C. R. R. Co., 32 A. D. 98.

It is unintentional to an owner's liability for damages to stock of an adjoining owner being injured on a barb wire fence that the fence was not built on the line but on the property of such owner yet near division lines of the properties.

Rowland v. Baird, 18 Abb. N. C. 256.

The amendment in 1896 to the above statute does not repeal chap. 755, Laws 1894, but simply modifies it by permitting use of barb wire in division fences when constructed as therein provided without the consent of the adjoining owner.

Buckley v. Clark, 21 Misc. 138.

Strays, etc.; notice to town clerk.

If a tenant erects the barb wire fence and injury occurs to adjoining owner's stock tenant is liable for such damage.

Buckley v. Clark, 21 Misc. 138.

§ 144. **Strays and beasts doing damage.**—Whenever any person shall have any strayed horses, cattle, sheep, swine or other beasts upon his inclosed land, or shall find any such beast on land owned or occupied by him doing damage, and such beast shall not have come upon such lands from adjoining lands, where they are lawfully kept, by reason of his refusal or neglect to make or maintain a division fence required of him by law, such person may have a lien upon such beasts for the damage sustained by reason of their so coming upon his lands and doing damage, for his reasonable charges for keeping them, and all fees and costs made thereon, and he may keep such beasts until such damages, charges, fees and costs are paid, or such lien is foreclosed, upon complying with the provisions of this article relating thereto.

Town Law, §120; 3 R. S. 3224.

§ 145. **Notice to town clerk.**—If such beasts are not redeemed within five days after coming upon such lands, the person entitled to such lien shall deliver to the town clerk of the town, within which such lands or some part thereof shall be, a written notice subscribed by him, containing his residence, and a description of the beasts so strayed or coming upon his lands, as near as may be, and that he claims a lien on such beasts for such damages, charges, fees and costs. The town clerk shall record the notice in a book to be kept by him for that purpose, for which he shall receive ten cents for each beast, to be paid by the person delivering the notice. Such book shall always be kept open for inspection, and no fees shall be taken by the clerk therefor.

Town Law, § 121. See form below.

FORM.

NOTICE TO TOWN CLERK OF LIEN UPON BEASTS FOUND UPON LAND DOING DAMAGE.

To the town clerk of the town of, in the county of

You are hereby notified, pursuant to statute, that I, the undersigned, a resident of the said town, have taken and have now in my possession, certain horses, etc., viz.: (describing them), which were found more than five days since, upon (inclosed) land situated (in part) in the said town of, owned or occupied by me, doing damage (or having strayed thereupon,, which have not come upon said land from adjoining lands, where they were lawfully kept, by reason of my refusal or neglect to make or maintain a division fence required of me by law, and that I claim a lien upon said horses, etc.,

Impounding beasts; notice; charges.

for the damage sustained by me by reason of their so coming upon my said lands and doing damage, for my reasonable charges for keeping them, and all fees and costs made thereon.

Dated, 190..

M. F.

§ 146. **Impounding beasts.**—Within six days after such beasts shall have come upon such lands, such owner or occupant may cause them to be put in the nearest pound in the same town, if there be one, there to remain until they are redeemed, sold or reclaimed according to law. If there be no such pound, or he elect to keep such beasts, he shall cause them to be properly fed and cared for until they are redeemed, sold or reclaimed according to law.

Town Law, § 122; 3 R. S. 3225.

§ 147. **Notice to owner.**—Within thirty days after any such beasts may have come or been found upon any lands, the owner or occupant of the lands shall serve a written notice, either personally or by mail, upon the owner of the beasts, if known, that they are upon his lands, or in pound, as the case may be, and are held by him as strays or beasts doing damage, as the case may be; and if such owner is not known, he shall publish such notice, within such time, in the nearest newspaper of the county for at least two successive weeks.

Town Law, § 123. See form below.

FORM.

NOTICE TO OWNER OF BEASTS TAKEN DOING DAMAGES THAT THEY ARE UPON HIS LANDS OR IN POUND.

To A. B.

You are hereby notified, pursuant to statute, that certain horses, etc., owned by you, to wit: (describing them) have come and been found within thirty days (doing damage) upon (inclosed) lands owned (or, occupied) by me, situated (in part) in the town of, in the county of....., and that said beasts are now upon my said lands (or, in pound), and are held by me as strays (or, beasts doing damage).

Dated, 190..

Yours, etc.,

M. F.

§ 148. **Charges for notice.**—The person delivering the notice to the town clerk shall be entitled to receive therefor, in addition to the fees paid the town clerk, fifteen cents each for all horses, mules, cattle and swine, and five cents for each other beast described in the notice. If the charges, damages, costs and fees are not agreed upon between the person delivering the notice and the

Fees; certificate.

owner of the beasts, they shall be determined by two fence viewers of the town, one of whom shall be selected by the person claiming the lien, the other by the fence viewer so selected. If such fence viewers cannot agree, they shall select another to act with them, and the decision of any two of them shall be final.

Town Laws, § 124. See form.

FORM.

CERTIFICATE OF FENCE VIEWERS AS TO CHARGES, ETC., DUE TO OWNER FOR ANIMALS TAKEN DOING DAMAGE.

We the undersigned, two of the fence viewers of the town of, in the county of, do hereby determine and certify as follows, viz.:

That certain of the horses, etc., belonging to M. N., of said town, having been found upon the (inclosed) lands in said town of A. R., a resident of said town, doing damage (or, they having strayed upon his said inclosed land), and having been taken by said A. B., and due proceedings having been thereupon had, according to law, and the charges, damages, costs and fees in such proceedings not having been agreed upon between said A. B. and said M. F., and the amount thereof having been submitted to the undersigned for their determination thereupon, and we having examined the premises upon due notice to the parties, and heard their allegations:

Now, therefore, we do hereby find and determine that the said charges, damages, costs and fees amount to the sum of dollars.

And we further certify that our fees for our services herein amount to the sum of dollars.

Witness our hands this day of, 190..

P. R.
O. G.

§ 149. Fees of fence viewers.—Each fence viewer shall be entitled to receive ten cents for every mile he shall be obliged to travel from his residence to the place where the beasts are kept, and seventy-five cents for certificate of the charges as ascertained by them.

Town Law, § 125.

§ 150. Certificate of fence viewers.—

COUNTY OF }
TOWN OF } ss.:

F. P., the owner of lands situated in said town, having made application to the undersigned, two of the fence viewers of said town, to ascertain and appraise the damages arising in consequence of the refusal (or, neglect) of M. E., the owner of land in said town adjoining the land of said F. P., to make and maintain his proportion of a division fence between the aforesaid lands (or, to keep in repair; or, in permitting his proportion of, etc., to be out of repair), we have examined the premises, and after inquiry and examination made by us, after due notice to said M. E., we do hereby decide and determine that the said F. P. has sustained damage to his land, crops, fruit trees and

When lien foreclosed; notice of sale.

shrubbery in consequence of the refusal (or, neglect) of the said M. E. to make and maintain (or, to keep in repair, or, in permitting to be out of repair) his proportion of the said division fence as aforesaid, which said damages we have ascertained and appraised at the sum of dollars.

And we further certify that our fees for our services herein amount to dollars.

In witness hereof we have hereto set our hands this day of, one thousand nine hundred and

§ 151. When lien may be foreclosed.—If the owner of such beasts shall not redeem the same within three months after delivery of the notice to the town clerk, the person delivering the notice may foreclose his lien by action, or by a sale of the beasts, as herein provided. When a person claiming a lien, as herein provided, shall fail to establish the same, he shall not be entitled to receive anything for damages, charges, fees or costs, but shall be liable to pay all fees, costs and expenses incurred by reason of his keeping such beasts and the proceedings thereon.

Town Law, § 126; 3 R. S. 3225.

§ 152. Notice of sale by fence viewers.—After such three months, a fence viewer of the town, on application of the person delivering the notice, shall give at least ten days' previous notice of the time and place of the sale of such beasts, by advertisement posted up in at least five public places in the town where such beasts may have been kept, one of which shall be at or near the outside door of the town clerk's office. At the time and place mentioned, such fence viewers shall sell such beasts to the highest bidders, unless redeemed by the owner.

Town Law, § 127; 3 R. S. 3226. See form below.

FORM.

NOTICE OF SALE OF PROPERTY BY FENCE VIEWERS IN FORECLOSURE OF LIEN.

Whereas, a notice of lien has been duly delivered by A. B. of the town of, in the county of, the owner of land situated in the said town, to the clerk of said town, on the day of, 190.., upon the animals of M. N., described as follows, to wit: (describe same), which animals were taken by said A. B., doing damage upon his said lands (or, having strayed upon his inclosed land). And whereas, the said M. N. has not redeemed the said animals, although more than three months have expired since the delivery of said notice to said clerk, now upon the application of the said A. B. to the undersigned, a fence viewer of said town.

Notice is hereby given, pursuant to law, that the said beasts will be sold by me at public auction, at (name place of sale), in the said town of, on the day of, 190.., at o'clock in thenoon, to the highest bidder, unless redeemed by the owner.

Dated, 190..

F. R.,
Fence Viewers.

Proceeds of sale, notice of meeting, duties, foreclosure.

§ 153. **Proceeds of Sale.**—Out of the proceeds from such sale, the fence viewer shall retain and pay the sums charged for such notices, fees and costs, together with the sums specified in the certificate for keeping the beasts, and damages done by them; and the like charges for the sale, as are allowed on sales under executions issued out of the justice's courts, and he shall pay the residue to the owner of the beasts, if he shall appear and demand the same.

Town Law, § 128.

§ 154. **Notice to owner of fence viewers' meeting.**—When the owner of such beasts is known and resides in the same town where such beasts are kept, five days' notice of the time and place of the meetings of the fence viewers to determine the damages done by such beasts, and the charges for keeping them, shall be personally served on him, if he resides in the same town; if he resides elsewhere, and his post office address is known, such notice shall be served by mail or personally.

Town Law, § 129.

§ 155. **Duties of fence viewers.**—The fence viewers shall view the premises where damages are claimed to have been done, and they may issue subpoenas, examine witnesses and take any competent evidence of the facts and circumstances necessary to enable them to determine the matter submitted to them, and shall determine any dispute that may arise touching the sufficiency of any division fence around the premises where such damage was done, and from where and how the beasts came upon the lands of the person claiming such damages and charges; if they determine that for any cause the claimant's lien is not enforcible, they shall so certify, and the owner of the beasts shall thereupon be entitled to them without paying any charges thereon.

Town Law, § 130.

§ 156. **Foreclosure of lien by action.**—When such lien is foreclosed by action, all questions relating to damages, charges, sufficiency of fence, and from where and how such beasts came upon the lands of the person claiming such damages and charges, shall be proven upon the trial of such action, and no certificate of fence viewers upon such questions shall then be necessary.

Town Law, § 131.

Pound masters, surplus moneys, etc.

§ 157. **Duty and fees of pound masters.**—Every pound master shall receive and keep all beasts delivered to him as herein provided, until they shall be redeemed, sold or reclaimed, for which he shall be entitled to a reasonable compensation, not exceeding fifty cents per day for a horse or mule, twenty-five cents per day for each head of cattle, and fifteen cents per day for all other beasts, to be determined by the fence viewer making the sale, or the court before whom the action is tried, besides his fees for taking and discharging the beasts, to be paid by the owner of the beasts, if the lien is established, otherwise by the person claiming a lien thereon.

Town Law, § 132.

§ 158. **Surplus moneys.**—If the owner of the beasts shall not appear and demand the residue of such moneys within one year after the sale, he shall be thereafter precluded from recovering any part thereof, and the same shall be paid by the officer making the sale to the overseers of the poor of the town, or, in cities, to the officers having their powers, for the use of the poor thereof, and their receipt shall be a legal discharge to the keeper of such beasts and the officer selling the same. If the officer who shall have sold such beasts shall not, within thirty days after the expiration of the year, pay such moneys to the overseers of the poor of the town, or, in cities, to officers having their powers, he shall forfeit to the town or city double the sum so remaining in his hands, together with the amount of such moneys.

Town Law, § 133.

§ 159. **Villages and cities deemed towns.**—The villages and cities of this state shall be considered towns for the purposes of this article; and the trustees of the village and the aldermen of the city shall be fence viewers therein for the purposes of this article.

Town Law, § 134; 3 R. S. 3227.

§ 160. **Damages from inanimate goods.**—When any person shall be authorized to distrain inanimate goods or chattels doing damage, or whenever any logs, timbers, boards or plank, in rafts or otherwise, or other personal property shall have drifted upon his lands, he shall be entitled to the same remedies, and shall proceed therein in the same manner and with the same powers as

Floating lumber, wrecked property, powers of wreck masters, etc.

herein provided with respect to beasts found doing damage, so far as such provisions are applicable. He may at any time deliver his notice of lien to the town clerk, describing the property, and he shall keep the same in some convenient place without removal to a pound, until the property is sold or reclaimed. The same officers shall conduct proceedings therein, as in proceedings where beasts are found doing damage, and all proceeds of sale shall be, in like manner, paid over and applied, subject to the same penalties and liabilities, and with the same force and effect.

Town Law, § 135.

§ 161. **Penalty for conversion of floating lumber.**—Whoever shall convert to his own use, without the consent of the owner thereof, any logs, timber, boards or plank, floating in any of the waters of this State, or lying on the banks or shores of any such waters, or on any such waters, or on any island where the same may have drifted, shall, for every offense, forfeit to the owner of such logs, or other lumber, three times the value thereof.

Town Law, § 136.

§ 162. **Recovery of wrecked property.**—No ship, vessel or boat, nor any goods, wares and merchandise, cast by the sea or any inland lake or river upon the land, shall be deemed to belong to the people of the State as wrecked property, but may be recovered by the owner, consignee or person having the charge thereof at the time of the disaster by which the wreck was occasioned, upon the payment of a reasonable salvage and necessary expenses.

Town Law, § 137.

§ 163. **Powers and duties of sheriffs, coroners and wreck masters.**—The sheriff, coroners and wreck masters of every county in which any wrecked property shall be found, when no owner or other person entitled to the possession of such property shall appear, shall severally take all necessary measures for saving and securing such property; take possession thereof, in whose hands soever the same may be, in the name of the people of the State; cause the value thereof to be appraised by disinterested persons; and keep the same in some safe place to answer the claims of the persons entitled thereto.

Town Law, § 138.

§ 164. **Sale of Wreck.**—If the property so saved shall be perishable, so as to render the sale thereof expedient, the officer, in

Delivery of wreck to claimant, undertaking.

whose custody the same shall be, shall apply to the county court of the county, or the city court of the city, where such property may be, by a verified petition stating the facts, for an order authorizing such sale; if the court shall be satisfied that a sale of the property would be most beneficial to the parties interested, it shall make the order so applied for, and the officer having custody of the property shall sell the same at public auction, at the time and in the manner specified in the order, and the proceeds of such sale, deducting the expenses allowed by the court, shall be paid to the treasurer of the county in which the property shall have been found.

Town Law, § 139; 3 R. S. 3228.

§ 165. Delivery of wreck or proceeds to claimant.—If, within a year after such wrecked property shall have been found and saved, any person shall claim the same, or the proceeds thereof, as owner or consignee, or the agent of the owner or consignee, and shall establish his claim by evidence, such court shall make an order directing the officer, in whose possession the property, or its proceeds, shall be, to deliver or pay the same to the claimant, upon the payment by him of a reasonable salvage, and all necessary expenses incurred in the preservation and keeping of the property.

Town Law, § 140.

§ 166. Claimant's undertaking.—No such order shall, however, be made unless the claimant shall deliver to such court an undertaking with one or more sufficient sureties to be approved by the court, to the effect that he will pay all damages recovered against such claimant or his representatives, within two years after the date of the undertaking, by any person establishing his title as owner of such property or proceeds. The undertaking shall be filed in the clerk's office of the county in which it shall be taken.

Town Law, § 141.

§ 167. When owner may sue.—The rejection by the court of any claim for wrecked property shall not preclude the claimant from maintaining an action for the recovery of such property or its proceeds, against the officer in whose hands the same shall be; but if the plaintiff in any such action shall prevail, there shall be deducted, in addition to the salvage and expenses charged on the property, from the damages recovered, the costs of the defense.

Town Law, § 142.

Salvage, duties of wreck-masters, etc.

§ 168. **Claim for salvage.**—Every officer to whom any order duly made, for the delivery of the wrecked property, or its proceeds, shall be directed, shall present to the claimant exhibiting such order, a written statement of the claims for salvage and expenses on such property, and proceeds. If the claimant shall refuse to allow such claims, the amount of such salvage and expenses shall be adjusted in the manner hereinafter provided, and, after the payment or tender of the payment of such salvage and expenses as agreed to or adjusted, the officer, in whose custody such property or proceeds shall be, shall deliver or pay the same, according to the terms of the order directed to him.

Town Law, § 143.

§ 169. **Duties of wreck-masters.**—Wreck-masters in the several counties shall give all possible aid and assistance to all vessels stranded on the coasts of their respective counties, and to the persons on board the same, and use their utmost endeavors to save and preserve such vessels and their cargoes, and all goods and merchandise which may be cast by the sea upon the land; and in the performance of these duties they shall employ such men as they may respectively think proper; and all magistrates, constables and citizens shall aid and assist the wreck-masters, when required in the discharge of their duties.

Town Law, § 144; 3 R. S. 3229.

§ 170. **Detention of wreck.**—All sheriffs, coroners and wreck-masters, and all persons employed by them, and all other persons aiding and assisting in the recovery and preservation of wrecked property, shall be entitled to a reasonable allowance as salvage for their services, and to all expenses incurred by them in the performance of such services, out of the property saved, and the officer having the custody of such property shall detain the same until such salvage and expenses shall be paid, and the salvage claimed in any case shall not exceed one-half of the value of the property or proceeds, and every agreement, order or adjustment allowing a greater salvage shall be void.

Town Law, § 145.

§ 171. **Appointment of appraisers.**—If the amount of salvage and expenses on property saved shall not be adjusted by agreement of the parties, the owner or consignee of such property, or the master or supercargo having charge thereof at the time the same was wrecked, or a claimant having an order for its delivery, may

Sale of property, publication of notice.

apply to the county court of the county, or the city court of a city in which such property shall be, for the appointment of suitable persons as appraisers, to adjust the amount of such salvage and expenses; and such court shall, by an order, appoint three disinterested freeholders of the county, not inhabitants of the town in which the property shall have been saved, to adjust such salvage and expenses, who, before they shall enter upon the performance of their duties, shall be sworn to perform faithfully and impartially the duties of their trust. They shall have power to issue compulsory process for the attendance of witnesses, and to administer oaths to all witnesses who shall attend or be produced; and the written decision of the appraisers, or any two of them, as to the amount of salvage and expenses, and the sums to be paid to each person entitled to share in such salvage, or claiming such expenses shall be final and conclusive. The fees and expenses of the appraisers shall be paid by the person upon whose application they shall have been appointed, and shall be a charge upon the property saved. Each appraiser shall be entitled to five dollars for each day's necessary attendance, and expenses.

Town Law, § 146.

§ 172. **Sale and disposition of property.**—If within a year after wrecked property shall have been saved, no person shall have appeared to claim the same, or if the salvage and expenses on such property shall not have been paid within three months after the same shall have been adjusted, or an action for the recovery of the property have been commenced, the officer in whose custody the property shall be shall sell the same at public auction, and pay the proceeds of such sale, deducting salvage and expenses, into the treasury of this State, for the benefit of the parties interested; but in no case shall any deduction of salvage and expenses be made unless the amount thereof shall have been adjusted upon due proof, by an order of such county or city court, a copy of which order and of the evidence in support thereof, shall be transmitted by the court making it to the comptroller. If the property has been sold as perishable, the balance of the proceeds, after the salvage and expenses as adjusted, shall be paid by the county treasurer into the treasury of this State.

Town Law, § 147.

§ 173. **Publication of notices of sales.**—Public notice of every sale to be made of wrecked property, under the provisions of this

Notice of wrecked property, wreck-masters, cattle distrained, etc.

article, shall be published by the officer making the sale, for at least two weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice shall state the time and place of the sale, and shall contain a particular description of the property intended to be sold.

Town Law, § 148; 3 R. S. 3230.

§ 174. **Publication of notice of wrecked property.**—Every sheriff, coroner, or wreck-master, into whose possession any wrecked property shall come, shall immediately thereafter publish a notice directed to all parties interested, for at least four weeks in succession, in one or more of the newspapers published in the county where the property shall have been saved. Every such notice shall contain a minute description of such wrecked property, and every bale, bag, box, cask, piece or parcel thereof, and of the marks, brands, letters and figures on each, and shall state where such wrecked property then is, and its actual condition, and the name, if known, of the vessel from which it was taken or cast on shore, and the master and supercargo of such vessel, and the place where such vessel then is, and its actual condition. The expense of publishing every notice required to be published relating to wrecks, shall be charged on the property or proceeds to which it relates.

Town Law, § 149.

§ 175. **Appointment of wreck-masters.**—There shall continue to be fifteen wreck-masters for the county of Suffolk, twelve in the county of Queens, three in the county of Kings, two in the county of Richmond, and two in the county of Westchester, who shall hold their offices for two years, and be appointed by the governor.

Town Law, § 150.

§ 176. **Keeping cattle distrained, etc.**—When any distress shall be made of any beasts doing damage, the person distraining shall keep such beasts in some secure place other than the public pound, until his damages shall be appraised; and within twenty-four hours after such distress, unless the same was made on a Saturday, in which case, before the Tuesday morning thereafter, he shall apply to two fence viewers of the town to appraise the damage.

2 R. S. 517, § 1; 1 R. S. 883.

§ 177. **Fence-viewers to appraise damages.**—Such fence-view-

Sufficiency of fence, beasts impounded, sale, etc.

ers shall thereupon immediately repair to the place, and view the damage done; and they may take the evidence of any competent witnesses of the facts and circumstances necessary to enable them to ascertain the extent of such damage, for which purpose, either of them is hereby authorized to administer an oath to every such witness.

2 R. S. 517, § 2; 1 R. S. 883.

A distrainer acts at his peril, and if he is unable to comply with the provisions of the statute for the reason that the officers who were to assess damages did not exist or could not be found within the time prescribed by the statute, then the seizure was unlawful, and authorized the owner who may bring replevin to recover possession of the property distrained.

Armbruster v. Wilson, 43 Hun, 261.

§ 178. **Certifying same.—Determining sufficiency of fence.—**The said fence-viewers shall ascertain and certify, under their hands, the amount of such damage, with their fees for their services; and if any dispute shall arise, touching the sufficiency of any fence around the premises, where such damage was done, the said fence-viewers may examine witnesses in relation thereto, and for that purpose, may administer oaths to such witnesses; and they shall determine such dispute; which decision shall be conclusive.

2 R. S. 517, § 3.

§ 179. **Putting beasts in pound, etc.—**Within twenty-four hours after the said damages shall be so appraised, unless the amount so ascertained, and the fees of the fence viewers, shall have been paid, the person making such distress shall cause the beasts distrained to be put in the nearest pound in the same county, if there be one, there to remain until the same be sold, as hereinafter directed, or until replevined according to law, or until the damages so certified, and the fees of the fence viewers and pound-master, be paid; and he shall deliver the certificate of the fence viewers to the keeper of such pound. The owner of such beasts may give them their feeding, without disturbance.

2 R. S. 517, § 4.

§ 180. **Sale of beasts, etc.—**The pound-masters of the several cities and towns of this State shall receive and keep the beasts so delivered to them, in the public pound, and unless the same shall be replevied or discharged, according to law, within six days, such pound-master shall sell such beasts, or so many of them as shall be necessary, at public vendue, giving forty-eight hours' notice

Proceeds of sale, inanimate goods, damages, etc.

of such sale, by advertisement, to be fixed up at such pound, and at the nearest public place.

2 R. S. 517, § 5.

§ 181. **Proceeds of sale.**—From the proceeds of such sale, the pound-master may retain sufficient to pay the amount of his fees and his charges for keeping such beasts, and the charges of such sale; and he shall pay to the person impounding such beasts the damages so certified, with the fees of the fence viewers; and if there be any surplus, the same shall be paid to the owner of such beasts. If no owner appear within one year after such sale, and claim such surplus, the same shall be paid to the overseers of the poor of such city or town, for the use of the poor thereof.

2 R. S. 517, § 6.

§ 182. **Keeping inanimate goods.**—When any person shall be authorized by law to distrain any inanimate goods or chattels doing damage, he shall keep the same in some safe and convenient place, until the damage shall be appraised, and the goods be sold or otherwise disposed of.

2 R. S. 517, § 8; 1 R. S. 884.

§ 183. **Appraising damages.**—He shall apply to any two fence viewers of the town to appraise the damages sustained by him; who shall proceed therein, in the same manner and with the same powers as hereinbefore provided with respect to cattle doing damage; and in addition, they shall estimate and certify the value of the property distrained.

2 R. S. 517, § 9.

§ 184. **Statistics of insane.**—It shall be the duty of the assessors in each town and ward in the State, every year, to make diligent inquiry, and ascertain with accuracy the number and names of all insane persons in said town or ward, and to make a list of the same with the best account they can get, in each case, of the patient's age, general health, habits and occupation, kind, degree and duration of insanity, and pecuniary ability of self and relatives liable for his support. They shall send this list, with all the facts brought down to the latest period, to the clerk of the county, by the first day of August, who shall carefully condense the facts exhibited and mail the same to the treasurer of the asylum at Utica without delay. No county clerk shall receive any compensation for any services performed under this act.

Laws 1842, chap. 135, § 44; 2 R. S. 1541.

Assessment rolls, intimidating assessor.

§ 185. **Examination of assessment-rolls and poll lists.**—The assessors in each city, village, town or ward, in this State shall allow persons appointed to make such enrollment, at all proper times, to examine their assessment-rolls and take copies thereof, and the clerks of all counties, towns and cities, shall in like manner, at all proper times, allow such persons to examine and copy the poll-lists on file in their offices. All persons shall, upon the application of any person making such enrollment, give the name of and all other proper information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment or false information, or refusal to give the information requested, to be recovered in the name of the people in any court, with costs. The officer making the enrollment shall, within ten days, report all persons who shall fail or neglect to give information to the adjutant-general of the State.

Military Code, § 4; 2 R. S. 2009.

§ 186. **Intimidating an assessor, etc.**—A person who directly or indirectly addresses any threat or intimidation to a public officer, or to a juror, referee, arbitrator, appraiser, or assessor, or to any other person authorized by law to hear or determine any controversy or matter, with intent to induce him, contrary to his duty, to do or make, or to omit or delay, any act, decision or determination, is guilty of a misdemeanor.

Penal Code, § 127.

CHAPTER SEVEN.

MUNICIPAL DEBTS.

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§ 187. **Limitation of indebtedness.**—No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized by law. No county or city shall be allowed to become indebted for any purpose or in any manner to an amount which, including existing indebtedness, shall exceed ten per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county

Limitation of indebtedness.

or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as may now exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds ten per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained, or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes.

Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and a sinking fund shall be created on the issuing of the said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city, if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county heretofore existing shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year two per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt.

Constitution, art. 8, § 10, as am'd to take effect January 1, 1900, Law 1899, pg. 1601.

Limitation of indebtedness.

Further limitations.—No county containing a city of more than one hundred thousand inhabitants, nor any such city shall contract any debt, the amount of which, exclusive of its outstanding debt, shall exceed a sum equal to five per centum of the aggregate valuation of the real property within its bounds, as assessed for State and county purposes upon the then last corrected assessment-roll, nor shall it contract any such debt if the amount thereof inclusive of its outstanding debts shall exceed a sum equal to ten per centum of such valuation. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes of amounts actually contained or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such taxes. Nor shall this section be construed to prevent the issuing of bonds to provide for the supply of water, but the term of the bonds issued to provide for the supply of water shall not exceed twenty years, and the sinking fund shall be created on the issuing of such bonds for their redemption by raising annually a sum which will produce an amount equal to the amount of the principal of said sum and interest of said bonds at their maturity. This section shall not apply to debts contracted for the purpose of retiring or paying any existing indebtedness pursuant to the provisions of this chapter.

Municipal Law, § 2; 2 R. S. 2101.

Limitation continued.—An issue of town or county obligation shall not be authorized when such issue, with the amounts issued and outstanding under any previous or other authority of the board, shall exceed ten per centum of the assessed valuation of the real estate of such town or county, as it shall appear on the last assessment-rolls thereof, unless by the assent of a majority of the electors of such town or county, whose credit is proposed to be given, voting on the question at a regular town meeting of such town, or an annual election in such county; but in no case shall the amount of such town or county obligations, issued and outstanding, exceed one-third of such assessed valuation. This section shall not include any case where special authority has been given by the legislature to issue such obligations in excess of the amounts herein authorized.

County Law, § 13, as am'd by chap. 251, Laws 1893; 1 R. S. 738.

Limitation of indebtedness.

Limitation of indebtedness of town in Adirondack Park.—No town, including a portion of the Adirondack park, shall hereafter contract any debt or debts which shall exceed the sum of three thousand dollars, except upon the duly verified petition of the owners of at least sixty-five per centum of the taxable real property therein, as such real property appears on the last preceding completed assessment roll of such town. For the purposes of this act, the consent of the comptroller shall be deemed to be the consent of the state. This section shall not apply to debts contracted for the purpose of retiring or paying any existing indebtedness pursuant to law.

Town Laws, § 215, added by Laws 1904, chap. 436.

This amendment of the constitution is not intended to be retroactive.

Rogers v. Smith, 5 Hun, 475.

To constitute a city purpose within the meaning of this section the purpose must be necessarily for the common good and general welfare of the people of the municipality, sanctioned by its citizens, public in character and authorized by the legislature.

Sun Pat. Co. v. Mayer, 152 N. Y. 257; People ex rel. Murphy v. Kelly, 76 N. Y. 475.

A municipal corporation cannot give away property or money or loan its money or credit to or in aid of any individual or corporation or become the owner of stock in or bonds of a corporation.

Sweet v. Syracuse, 129 N. Y. 316.

Any statute authorizing a town to repay to a citizen money which had been expended for a purely private purpose is an unauthorized gratuity and void.

Bush v. Supervisors, 13 Misc. 707.

Legislatures cannot authorize taxation for the purpose of making a gift or paying gratuities.

Matter of Jensen, 28 Misc. 378; Bush v. Supervisors, 159 N. Y. 216.

Laws 1892, chap. 664, empowering supervisors to raise by taxation money to pay drafted men who served in the Civil war or paid commutation money is unconstitutional.

Bush v. Supervisors, 159 N. Y. 212.

The creation of liability of a town for the negligence of highway commissioners in its application and results is not a gift of the money or property of the town to or in aid of an individual within the meaning of this section of the constitution.

Bidwell v. Town of Murray, 40 Hun, 190.

The limitation applies to two cases: (1) a city containing over 100,000 inhabitants, and (2) a county within which is a city containing that population. The power of the city or county is restricted only by the amount of its own debts, and the debts of both cannot be aggregated.

Adams v. E. R. S. I., 136 N. Y. 52.

Towns and other municipal corporations are organized for governmental purposes and their powers are limited and defined by the statutes under

Resolutions; funded debt.

which they are constituted. They cannot borrow money unless expressly authorized by statute or necessarily implied.

Wells v. Salina, 119 N. Y. 280.

Officers of municipal corporations are special agents and persons doing business with them are presumed to know just what their powers to bind the corporation are.

People ex rel. Childs v. Cartwright, 9 Hun, 159.

By this section a town is limited to ten per cent of the assessed valuation of the real estate therein, etc.

Ghiglione v. Marsh, 23 A. D. 61.

§ 188. **Resolutions authorizing issue of obligations.**—Every resolution of any such board (of supervisors), authorizing the issue of such obligations, shall specify the form thereof, the place of payment, in annual installments or otherwise, within a period not exceeding thirty years from the date of such obligation, and the rate of interest to be paid thereon, not exceeding the legal rate; and no such obligation shall be sold for less than par. Such resolution shall also contain a provision requiring adequate security to be given by the officer, or board of officers authorized to issue such obligations, for the faithful performance of his or their duty in issuing the same, and the lawful application of the funds arising therefrom, and of the funds which may be raised by tax for the payment thereof, which may come into their hands.

County Law, § 14; 1 R. S. 738.

§ 189. **Funded debt.**—A funded debt shall not be contracted by a municipal corporation, except for a specific object, expressly stated in the ordinance or resolution proposing it; nor unless such ordinance or resolution shall be passed by a two-third vote of all the members elected to the board of council adopting it, or submitted to, and approved by, the electors of the town or county, or taxpayers of the village or city when required by law. Such ordinance or resolution shall provide for raising annually, by tax, a sum sufficient to pay the interest and the principal as the same shall become due.

Municipal Law, § 5; 2 R. S. 2102.

Funded debt is defined as meaning all indebtedness evidenced by a bond payable at a time beyond the current fiscal year.

People ex rel. Peene v. Carpenter, 31 A. D. 603.

§ 190. **Funded and bonded debts.**—The bonded indebtedness of a municipal corporation, including interest due or unpaid, or any part thereof, may be paid up or retired by the issue of the

Debts.

new substituted bonds for like amounts by the board of supervisors or supervisor, board, council or officers having in charge the payment of such bonds. Such new bonds shall only be issued when the existing bonds can be retired by the substitution of the new bonds therefor, or can be paid up by money realized by the sale of such new bonds. Where such bonded indebtedness shall become due within two years from the issue of such new bonds, such new bonds may be issued and sold to provide money in advance to pay up such existing bonds when they shall become due. Such new bonds shall contain a recital that they are issued pursuant to this section, which recital shall be conclusive evidence of their validity and of the regularity of the issue; shall be made payable not less than one or more than thirty years from their date; shall bear date and draw interest from the date of the payment of the existing bonds, or the receipt of the money to pay the same, at not exceeding the rate of five per centum per annum, payable quarterly, semi-annually or annually; and an amount equal to not less than two per centum of the whole amount of such new bonds may be payable each year after the issue thereof. Such new bonds shall be sold and negotiated at the best price obtainable, not less than their par value; shall be valid and binding on the municipal corporation issuing them; and until payable shall be exempt from taxation for town, county, municipal or state purposes. All bonds and coupons retired or paid shall be immediately canceled. A certificate shall be issued by the officer, board or body issuing such new bonds, stating the amount of existing bonds, and of the new bonds so issued, which shall be forthwith filed in the office of the county clerk. Except as provided in this section, new bonds shall not be issued in pursuance thereof, for bonds of a municipal corporation adjudged invalid by the final judgment of a competent court. A majority of the taxpayers of a town, voting at a general town meeting, or special town meeting duly called, may authorize the issue in pursuance of this section of new bonds for such invalid bonds, and each new bond so issued shall contain substantially the following recital: "The issue of this bond is duly authorized by a vote of the taxpayers of the said town," which shall be conclusive evidence of such fact. The payment, adjustment or compromise of a part of the bonded indebtedness of a municipal corporation shall not be deemed an admission of the validity or a recognition of any part

Issuance and registry of bonds.

of the bonded indebtedness of such municipal corporation not paid, adjusted or compromised.

Municipal Law, § 7, as am'd by Laws 1897, chap. 54; Laws 1901, chap. 333.

No provision expressly authorizes the appointment of agents or attorneys to discharge the duties that are imposed upon the several governmental offices mentioned in the several statutes above cited.

People ex rel. Read v. Town of Smithville, 85 Hun, 114.

The refunding act applies to every village, city or county owing such debts and desiring to extend it through an added period of credit.

City of Poughkeepsie v. Quintard, 136 N. Y. 275.

The constitution does not deprive municipalities of the right to compromise a claim which they dispute and which might become a charge against the municipality to its full extent.

Hill v. Peekskill, S. B. 101 N. Y. 490.

The two forms of extension authorized are, 1st, an exchange of old for new bonds securing the new credit at the lower rate of interest, and 2d, to meet the emergency of a refusal by holders to make the exchange bond for bond, the issue and sale of new bonds, applying the proceeds to the cancellation of the old ones.

City of Poughkeepsie v. Quintard, 136 N. Y. 275.

When the original bonds are void they do not constitute an indebtedness of the town and the commissioners have no authority to issue new bonds for the purpose of paying or retiring them.

Hill v. Peekskill S. B., 26 Hun, 161.

This statute is an enabling act for all municipalities.

City of Poughkeepsie v. Quintard, 136 N. Y. 275.

It does not dispense with additional consents required by special act.

People v. Parmeter, 158 N. Y. 385.

§ 191. Issuance of municipal bonds.—Each bond issued by a municipal corporation shall be signed by each officer issuing the same, with the designation of his office; and the interest coupons attached thereto, if any, shall be signed by one of their number. Each such bond shall state the place of payment and, if no coupons are attached thereto, the name of the payee.

Municipal Law, § 8; 2 R. S. 2103.

The commissioners to issue the bonds are not town officers and represent the town no further than they could within the statute.

Potter v. Greenwich, 26 Hun, 326; 92 N. Y. 662; Cagwin v. Hancock, 84 N. Y. 532.

The power is not limited to the employment of brokers to assist in procuring the sale of bonds.

Armstrong v. Village of Ft. Edward, 159 N. Y. 315.

§ 192. Registry of municipal bonds.—Each municipal corporation shall keep in the office of its clerk suitable books, in

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which shall be entered a full description of the amount, rate of interest, class, number, date of issue, pursuant to what law, and maturity of all bonds issued by any of its officers, and, if such statement is not already entered, of all bonds converted from coupon into registered bonds. A bond to which no coupons are attached may be registered, at the request of the payee, in the books so kept in the office of such clerk, and a certificate of such registry shall be indorsed upon the bond by such clerk, and attested by his seal, if he has one. The clerk shall be entitled to a fee of twenty-five cents for each bond so registered. The principal and interest of a registered municipal bond shall be payable only to the payee, his legal representatives, successors or assigns, and shall be transferable only upon presentation to such clerk, with a written assignment duly acknowledged or approved. The name of the assignee shall be entered upon such bond so transferred and the books so kept in the office of the clerk. It shall be the duty of the clerk or other officer having charge of the office where such registry is kept, to transmit a statement of such indebtedness to the clerk of the board of supervisors of the county in which such office is situated, annually, on or before the first day of November.

Municipal Law, § 9; 2 R. S. 2103.

§ 193. **Conversion of coupon into registered bonds.**—When the owner of coupon bonds of a municipal corporation shall present any such bonds to the officers who issued the same, or their successors, with a written request for their conversion into registered bonds, such officer shall cut off and destroy the coupons and stamp, print or write upon each of the bonds a statement, properly dated, of the amount and value of such coupons, and that the interest, at the rate and on the date, as was provided by the coupons, as well as the principal, is to be paid to such owner, his legal representative, successors or assigns, at a place therein stated, which shall be the place stated in the coupons, unless changed with the written consent of the owner; and thereupon such bonds may be registered in the office of the clerk of the municipal corporation. This section shall not apply where provision is otherwise made by law or local ordinance, for the conversion or exchange of coupons for registered bonds.

Municipal Law, § 10; 2 R. S. 2104.

Bonds, loans.

§ 194. **How owner may make bonds non-negotiable.**—The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as currency, payable to bearer), heretofore or hereafter issued in, and payable in this State, but not registered in pursuance of any state law, may make such bond or obligation or the interest coupon accompanying the same, non-negotiable by subscribing his name to a statement indorsed thereon that such bond, obligation or coupon is his property; and thereupon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer or order, with the addition of the assignor's place of residence.

Negotiable Instrument Law, § 332.

§ 195. **Payment of municipal bonds.**—Where the bonds of a municipal corporation have been lawfully issued, and the payment of the principal or interest thereof shall not have been otherwise paid or provided for, the same shall be a charge upon such corporation, and shall be levied and assessed, collected and paid the same as other debts and charges. When for any reason any portion of the principal or interest due upon such bonds shall not have been paid, the same shall be assessed, levied and collected at the first assessment and collection of taxes by such corporation after such omission.

Municipal Law, § 6; 2 R. S. 2102.

§ 196. **Defects not invalidating municipal bonds.**—When the bonds of a municipal corporation have been issued and sold by the proper authorities, and the time fixed for their maturity shall be for a longer period than provided by the law under which they were issued, a variance of not exceeding sixty days shall not affect their validity.

Municipal Law, § 11; 2 R. S. 2104.

§ 197. **Temporary loans.**—It is the duty of the town to provide means for the payment of its bonds lawfully issued. In case of failure to perform this duty the holder of the bonds may maintain an action against the town thereon even though by the act under which they were issued it is made the duty of the board of supervisors of the county to impose and levy a tax to pay the bonds. Such settled and admitted obligations of the

Taxpayers' consent; share in debt, collection.

town do not require the same to be audited and allowed by the board of town auditors, and the holder cannot resort to a mandamus against the board of supervisors.

Laws 1866, chap. 695, § 1; R. S. 2112.

§ 198. **Taxpayers' consent to be filed.**—The original written consent duly acknowledged or proved of the taxpayers to the loaning of money on the faith and credit of any town or city for the issuing of bonds of such town or city to aid in the construction of any railroad in this State, shall be recorded and filed in the office of the clerk of the county in which such towns or cities may be situated, and a copy thereof, duly certified by the said county clerk, shall be filed in the office of the clerk of the town or city wherein the respective property affected thereby is situated, any law requiring a different filing to the contrary notwithstanding.

Laws 1880, chap. 695, § 1; 2 R. S. 2112.

§ 199. **Share of new town in debt.**—Whenever any board of supervisors shall form a new town within its respective county, from parts of other towns, or town which shall have bonded to aid in the construction of any railroad under any act authorizing the same, and such bonds, or any part thereof, shall remain unpaid, or when any board of supervisors shall change the line of any town which shall have bonded to aid in the construction of any railroad in this State, and such bonds, or any part thereof, shall remain unpaid, the new town so formed and the part or parts taken from a town and added to another town shall pay a proportionate share of such bonds as shall remain unpaid, which share shall be ascertained from the assessed valuation of such town or towns as contained in the last equalized valuation of the assessment-roll, made prior to the formation of such town or the change of any such town line.

Laws 1880, chap. 336, § 1; 2 R. S. 2112.

§ 200. **Collection of same.**—It shall be the duty of the railroad commissioners of the town, any part of whose territory shall have been detached as aforesaid, to render a true statement to the board of supervisors, as now required by the General Railroad Act, of the amount necessary to pay the proportionate share belonging to the territory detached from their town, which may be then coming due, and the board of supervisors shall add such proportionate share to the sums to be collected from the town so

Annexed lands, etc., money collected, etc.

formed, or to the part or parts which shall have been detached from a town and added to another town, to be collected as prescribed by law.

Laws 1880, chap. 336, § 2.

§ 201. **List of annexed lands and inhabitants.**—The assessors of the town or towns to which shall have been added a part of another town shall yearly, until such bonds be paid, make a separate and distinct list of the taxable inhabitants and lands contained in the territory so annexed in the assessment-roll of the said town, in all respects similar in form and manner to the assessment-roll as now made. Such list shall be designated in such roll “List of annexed lands and inhabitants.”

Laws 1880, chap. 336, § 3.

§ 202. **Moneys collected, how applied.**—Such proportionate share of moneys collected as provided in the second section of this act shall be paid by the supervisor of the town wherein collected to the railroad commissioners of the town or towns from which such territory shall have been detached, and such commissioners shall use such moneys for the payment of the bonds issued in the same manner they are required to use the moneys raised in their own town.

Laws 1880, chap. 336, § 4.

§ 203. **Application of last four sections.**—The provisions of this act shall apply to all cases where a new town shall have been formed, or the line of any town shall have been changed by the board of supervisors of any county since the first day of January, eighteen hundred and seventy-nine, where no proceedings have been taken under chapter five hundred and ninety-seven of the laws of eighteen hundred and seventy.

Laws 1880, chap. 336, § 5.

§ 204. **Towns bonded for New York and Oswego Midland railroad.**—All real property within the corporate limits of any town assessed or liable to be assessed upon the assessment-roll of such town at the time of issuing bonds by said town pursuant to this act (chap. 398, Laws 1866), and all acts amendatory thereof, shall continue to be assessed and assessable for all purposes whatsoever in said town until said bonds, or any renewals thereof, are fully paid; and if the owner of such real property does not reside within said town, then such real property shall be assessed

Taxes of railroads.

as non-resident land or to any occupant of said real property actually residing within said town.

Laws 1866, chap. 398, § 25, as am'd by chap. 21, Laws 1883.

In a case in Oneida county where lands situated in the town of Vienna (which is so bonded) were assessed in the town of Vienna upon the lands situated therein, although the owner resided in the town of Verona, it was held to be properly taxable in Vienna for the lands situated in Vienna, and that the law relating to taxation, requiring lands divided by a town line to be assessed to the owner in the town where he resided, did not apply.

Casterton v. Town of Vienna, 78 St. Rep. 868.

§ 205. **Municipal taxes of railroads payable to the county treasurer.**—If a town, village or city has outstanding unpaid bonds, issued or substituted for bonds issued, to aid in the construction of a railroad therein, so much of all taxes as shall be necessary to take up such bonds, except school districts and highway taxes, collected on the assessed valuation of such railroad in such municipal corporation, shall be paid over to the treasurer of the county in which the municipal corporation is located. Such treasurer shall purchase with such moneys of any town, village or city, such bonds, when they can be purchased at or below par, and shall immediately cancel them in the presence of the county judge. If such bonds cannot be purchased at or below par, such treasurer shall invest such moneys in the bonds of the United States, of the State of New York, or of any town or village or city of such State, issued pursuant to law; and shall hold such bonds as a sinking fund for the redemption and payment of such outstanding railroad aid bonds. If a county treasurer shall unreasonably neglect to comply with this section, any taxpayer of the town, village or city having so issued its bonds may apply to the county judge of the county in which such municipal corporation is situated, for an order compelling such treasurer to execute the provisions of this section. Upon application of the town board of any town, the board of supervisors of the county in which said town is situated may authorize payment by the county treasurer of all moneys thus paid to him in any year by the railroads mentioned in this section, to the supervisor of such town, for its use and benefit; to be applied either to the purchase of outstanding railroad aid bonds or the payment of interest thereon, and any payment heretofore made in good faith by the treasurer of any county to any town or to the supervisor thereof, of the taxes received, in any year by such treasurer, from railroad corporations in that town is hereby validated. The county treasurer

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of any county in which one or more towns therein shall have issued bonds for railroad purposes, shall when directed by the board of supervisors or county judge of the county, execute and file in the office of the clerk of the county an undertaking with not less than two sureties, approved by such board or judge, to the effect that he will faithfully perform his duties pursuant to this section. The annual report of a county treasurer shall fully state, under the head of "railroad sinking fund" the name and character of all such investments made by him or his predecessors, and the condition of such fund.

General Municipal Law, § 12, as am'd by Laws 1903, chap. 515.

An action as for money had and received is maintainable on behalf of the town against the county to recover the money so misappropriated.

Strough v. Supervisors, 119 N. Y. 212.

Such a cause of action arises when the county treasurer appropriates the money to the payment of county obligations.

Kilbourne v. Supervisors, 137 N. Y. 170.

A supervisor of a town has authority to maintain an action against a person who by his wrongful and fraudulent conduct has created a debt which the town will be compelled to pay.

Mitchell v. Strough, 35 Hun, 86.

A town can enforce through its supervisors by action or by a town taxpayer on its behalf the application by its county of the taxes collected from a railroad in the town to the satisfaction of the bonds issued by the town in aid of the railroad.

Ackerman v. Supervisors, etc., 72 Hun, 616.

A cause of action arises when the misappropriation is made.

Pierson v. Wayne County, 87 Hun, 605.

The action is applicable to any municipality having bonds outstanding issued under any statute in aid of the construction of any railroad within its bounds.

Clark v. Sheldon, 134 N. Y. 333; Wood v. Supervisors, 136 N. Y. 403.

The railroad taxes are applicable to bonds which have been issued for the construction of a railroad where such original bonds have fallen due.

Matter of Van Tassell, 123 N. Y. 661.

The act applies to the new renewal bonds.

Barnum v. Supervisors, 62 Hun, 190; affirmed 137 N. Y. 179.

When the assent of the taxpayer of a town to issue the bonds in aid of the railroad company is once manifested in the way prescribed by the legislature it is irrevocable.

People v. Henshaw, 61 Barb. 409.

If a sufficient number of taxpayers revoke their consent with the requisite formality before it is agreed upon, a subsequent issue of bonds is illegal.

Springport v. Teutonia S. B., 84 N. Y. 403.

The authorities of towns, villages, cities and counties have no right to divert or appropriate these taxes for other purposes.

Clark v. Sheldon, 106 N. Y. 104.

Taxes of railroads.

The act requires the treasurer to invest the moneys collected from railroads within the bonded towns and to thus form a sinking fund for the redemption of the bonds.

Wood v. Madison County, 136 N. Y. 403; Spaulding v. Arnold, 125 N. Y. 194; Clark v. Sheldon, 106 N. Y. 104.

The sinking fund provided for in the act up to the time that the bonds mature and become due and payable constitutes a fund which the town has the absolute right to have applied in the payment of the bonds without regard to the stock.

Crowninshield v. Supervisors of Cayuga County, 124 N. Y. 583.

It is the duty of the company to apply the moneys received from the taxation of the railroad property to the formation of a sinking fund to pay off the same.

Barnum v. Supervisors, etc., 62 Hun, 190; affirmed 137 N. Y. 179.

The supervisors have no jurisdiction over the fund.

Clark v. Sheldon, 134 N. Y. 333.

The action is properly brought by the supervisor of the town in his name as its representative.

Strough v. Supervisor, etc., 119 N. Y. 212.

A town by bonding itself and causing a railroad to be built creates a new and additional property which becomes the subject of taxation.

Crowninshield v. Supervisors, etc., 124 N. Y. 583.

All taxes collected from railroad property within such towns are tied up for future use and current expenses, including the current interest on the bonds as the same fall due, have to be provided for by taxation on other property.

Wood v. Supervisors, etc., 136 N. Y. 403.

All taxes except school and road taxes imposed upon the railroads under the act of 1869 are required to be paid over to the county treasurer, and this obviously means all the taxes of every description, including town, village, city, county and state taxes, except school and road taxes.

Clark v. Sheldon, 106 N. Y. 104; Kilbourne v. Supervisors, etc., 137 N. Y. 170.

The town through its officers or its town meeting cannot change the direction of the fund.

Clark v. Sheldon, 134 N. Y. 333.

The fund in the hands of the treasurer is a trust fund upon which the law has impressed a distinct purpose, and any action that diverts it from that purpose is illegal.

Strough v. Supervisors, 119 N. Y. 219; Crowninshield v. Supervisors, 124 N. Y. 583.

A village has no power to issue its bonds in aid of a railroad except on a strict compliance with the terms of the statute.

Culver v. Ft. Edward, 8 Hun, 340.

Since the adoption by the people of the amendment to the state constitution no town can loan its money or credit in aid of any corporation or become the owner of stock in any corporation or incur any indebtedness except for town purposes.

Faulkner v. B. & J. R. R. Co., 69 N. Y. 491.

The right to a bona fide purchaser of town bonds cannot be affected by the repeal of the law under which they were issued.

Marsh v. Little Valley, 64 N. Y. 112.

Taxation, proceeds, duty of collector, etc.

§ 206. **Taxation.**—All laws and parts of laws in so far as they exempt the property, real or personal, of the New York and Oswego Midland railroad corporation from taxation are hereby repealed, and the real and personal property of the said corporation is hereby made subject to State, county, town and municipal taxation.

Laws 1874, chap. 296, § 1.

§ 207. **Proceeds of tax to be paid to commissioners of towns.**—All moneys to be collected upon the real and personal property of the said corporation and upon said real property now or hereafter used or held, or which may hereafter be used or held by any receiver or successor of said corporation for county taxes in any of the towns or municipalities by which bonds have been issued in aid of the construction of the New York and Oswego Midland railroad, are hereby appropriated to said towns or municipalities respectively, and shall be paid over to the commissioners of such towns or municipalities appointed pursuant to an act entitled “An act to facilitate the construction of the New York and Oswego Midland railroad, and to authorize towns to subscribe to the capital stock thereof, passed April 5, 1866,” or any act supplemental thereto or amendatory thereof, and the said moneys shall be by said commissioners expended for and applied to the payment of the interest on said bonds, or to the principal thereof.

Laws 1874, chap. 296, § 2.

§ 208. **Duty of tax collector.**—It shall be the duty of the collector of taxes of each such town or municipality to pay over to the said commissioners of his town or municipality, the amounts of the county tax collected by him from the said corporation or the real and personal property thereof, within five days from the time the same is collected; and the said commissioners shall give to the said collectors a receipt for the amount of county taxes so received, which said receipts shall be returned to the treasurer of the county in which the said collector shall reside.

Laws 1874, chap. 296, § 3.

§ 209. **Liability of collector and sureties.**—Collectors of taxes and the sureties on their official bonds shall be liable for any neglect or failure to pay over to the said commissioners the amounts, or any part thereof, by the provisions of this act directed to be paid by such collectors of taxes to the said commissioners.

Laws 1874, chap. 286, § 4.

Railroad commissioners, sale of stock.

§ 210. **Appointment of railroad commissioners.**—The county judge of any county within which is a municipal corporation having or being entitled to have railroad commissioners, when this chapter shall take effect, and in which the duties imposed upon such commissioners are not fully performed, shall continue to appoint and commission, upon the application of twenty freeholders within such corporation, three persons, who shall be freeholders and resident taxpayers therein, commissioners for the purpose of performing the duties and completing the business required of them pursuant to this chapter or any law. Such commissioners shall hold their office for five years, and until others are appointed by the county judge, unless their duties shall be sooner performed, or the office shall be abolished, who shall also, in like manner, fill any vacancies that may exist therein. Such commissioners shall each receive the sum of three dollars per day for each day actually engaged in the discharge of their duties, and the necessary disbursements to be audited and paid by the usual auditing and disbursing officers of such municipal corporation. A majority of such commissioners, at a meeting of which all have notice, shall constitute a quorum.

Municipal Law, § 14; 2 R. S. 2105.

§ 211. **Oath and undertaking of commissioners.**—Before entering upon their duties such commissioners shall take the constitutional oath of office, and make and file with the county clerk of their county their joint and several undertaking, with two or more sureties to be approved by the county judge of their county, to the effect that they will faithfully discharge their duties as such commissioners, and truly keep, pay over and account for all moneys belonging to such corporation coming into their hands.

Municipal Law, § 15; 2 R. S. 2105.

§ 212. **Exchange or sale of railroad stock and bonds.**—The commissioners or officers of a municipal corporation, having the lawful charge and control of any railroad stock or bonds, for or in payment of which the bonds of such municipal corporation have been lawfully issued in aid of such railroad corporation, may exchange the stock or bonds of such railroad corporation for and in payment of such bonds, or the new substituted bonds of such municipal corporation, when such exchange can be made for not less than the par value of the stocks or bonds so held by

Commissioners' annual report.

them. If they cannot make such exchange they may sell such stocks or bonds at not less than par; but they may, on the application and with the approval of the governing board of the municipal corporation owning such stock and bonds, exchange, sell or dispose of such stock or bonds, at the best price and upon the best terms obtainable, for the municipal corporation they represent, and shall execute to the purchaser the necessary transfers therefor. All moneys received for any stock or bonds shall only be applied to the payment and extinguishment of the bonds of the municipal corporation, lawfully issued in aid of any such railroad, or substituted therefor; except that if the bonds so issued or substituted have all been paid, or the moneys so realized shall be more than sufficient to pay them in full, and all costs and expenses of the sale, such proceeds or balance thereof shall be paid by the officers making the sale, to the supervisor of the town, or the treasurer of the municipal corporation, and applied to such lawful uses as the governing board of the municipal corporation, entitled to the same, may direct. The provisions of this section shall apply to all such commissioners or officers of a municipal corporation elected or appointed or acting under the provisions of any special act, and the authority hereby conferred shall not be limited by the provisions of any such special act.

Municipal Law, § 16; 2 R. S. 2105; see Municipalities, Laws 1880, chap. 336.

§ 213. **Annual report of commissioners and payment of bonds.**—The commissioners of a municipal corporation, having in charge the moneys received and collected, and who are responsible for the payment of the interest of the bonds lawfully issued by such municipal corporation, in aid of railroads, shall annually report to the governing board of the municipal corporation, the total amount of the municipal indebtedness of the municipal corporation they represent, upon such bonds or such new bonds substituted therefor, the date of the bonds and when payable, the rate of interest thereon, the acts under which they were issued, the amount of principal and interest that will become due thereon before the next annual tax levy and collection of taxes for the next succeeding year, and the amount in their hands applicable to the payment of the principal or interest thereon. Each year such governing board shall levy and collect of the municipal corporation sufficient money to pay such principal and interest, as the same shall become due and payable. When collected, such

Loans by commissioners, reissue of bonds.

moneys, with the unpaid sums on hand, shall be forthwith paid over to such commissioners, and applied by them to the purposes for which collected or held. When paid, such bonds shall be presented by such commissioners to the governing board of the municipal corporation, at least five days before the annual town meeting, village or city election, or meeting of the board of supervisors, next thereafter held, who shall cancel the same, and make and file a record thereof in the clerk's office of the municipal corporation, whose bonds were so paid or canceled.

Municipal Law, § 17; 2 R. S. 2106. See § 1673, post.

§ 214. **Accounts and loans by commissioners.**—Such commissioners shall present to the auditing board of the municipal corporation they represent, at each annual meeting of such board, a written statement or report, showing all their receipts and expenditures, with vouchers. They shall also loan on proper security or collaterals, or deposit in some solvent bank, or banking institutions, at the best rate of interest they can obtain, or invest in the bonds of the municipal corporation they represent, or in bonds of the State, or of any town, village, city or county therein, issued pursuant to law, or in the bonds of the United States, all moneys that shall come into their hands by virtue of their office, and not needed for current liabilities; and all earnings, profits or interest accruing from such loans, deposits or investments shall be credited to the municipal corporation they represent, and accounted for in their annual settlement with the governing board thereof.

Municipal Law, § 18; 2 R. S. 2106.

§ 215. **Reissue of lost or destroyed bonds.**—When any bonds lawfully issued by a municipal corporation in aid of any railroad, or in substitution for bonds so issued, shall be lost or destroyed, such commissioners may issue new bonds in the place of the ones so lost or destroyed, at the same rate of interest, and to become payable at the same time, upon the owner furnishing satisfactory proof, by affidavit, of such ownership, and loss or destruction, and a written indemnity, with at least two sureties, approved as to form and sufficiency by the county judge of the county in which such municipal corporation is situated. Every new bond so issued shall state upon its face the number and denomination of the bond for which it is issued, that it is issued in the place of such bond claimed to have been lost or destroyed, that it is issued

Voting of railroad stock, annual report of supervisor.

as a duplicate thereof, and that but one is to be paid. Such affidavit and indemnity, duly indorsed, shall be immediately filed in the county clerk's office.

Municipal Law, § 19; 2 R. S. 2106.

§ 216. **Voting on railroad stock.**—At any meeting of the stockholders of any railroad corporation to consider any agreement or proposition to consolidate or lease, the commissioners or other officers of any municipal corporation holding or having charge of any of the capital stock of such railroad corporation shall represent such municipal corporation and may act and vote in person or by proxy on all matters relating to such consolidation or lease in the same manner as individual stockholders.

Railroad Law, § 75, as am'd by chap. 546, Laws 1893; 3 R. S. 2555.

§ 217. **Annual reports to board of supervisors.**—When a town has a public debt, consisting of bonds, or other evidence of debt issued on the credit of the town, the supervisor thereof shall make a report to the board of supervisors of the county, at every annual session thereafter, of the amount of such indebtedness.

Town Law, § 210; 3 R. S. 3239; as to the limitation of the debt see ante § 1643.

§ 218. **Form of reports.**—Such report shall be in tabular form, specifying the different acts under which the bonds or debts were issued, with the rate of interest thereon, the amount unpaid at the time of the election of the supervisor, and the amount of debt paid at the date of his report, and coming due during his term of office.

Town Law, § 211.

§ 219. **Publication of report.**—The report so made shall be published in the annual report of the proceedings of the board of supervisors.

Town Law, § 212.

§ 220. **Duplicate reports.**—The supervisor shall also, at the expiration of his term of office, at the annual town meeting, make and present thereto, a duplicate copy of such report to the board of supervisors, including and adding thereto, the amount of bonds issued, and the amounts and interest paid, since the date of the report up to the day and date of his term of office, duly attested before a justice of the peace of his town, and which report shall

Report, bonds.

be filed in the town clerk's office of the town, subject to the inspection, by an elector thereof.

Town Law, § 213.

§ 221. Form of report.—

To the Honorable, the Board of Supervisors of.....County:

The undersigned supervisor of.....in said county in compliance with town law, sections 210 and 211 respectfully reports: That the bonded indebtedness of the said town of.....was at the time of my election as supervisor of said town at its last town meeting.....\$
 The amount paid at the date of this report.....\$
 During my term of office, to-wit.....\$
 there will become due on said indebtedness.....\$
 \$

The bonds above referred to bear date.....and were issued in accordance with the laws of 1881, Chapter 522, which provides that a payment of a like amount of bonds issued in aid of the Rochester and State Line Railroad Company, and bear interest at the rate of per cent, payable semi-annually at the office of the Security Trust Company of Rochester, with the bonds being payable at the same place on maturity.

The bonds are divided into six series of five One Thousand Dollar bonds each, and numbered from one to six inclusive. Series one was payable, and one series annually thereafter until all are paid.

The amount to be provided for the coming year is as follows:

Interest September 1st and May 1st, 190.....\$
 Series 2 payable May 1st, 190.....\$

Total\$
 Dated....., 190....

Respectfully submitted,

A report of town bonds issued under the act of 1869 should also contain a statement of the sinking fund.

The following form will answer:

The railroad sinking fund is as follows:

Amount on hand.....\$
 which is invested as follows:
 Bonds issued by the town of..... on the day
 of....., 190, due190, with interest
 at per cent.....\$
 Bonds issued by the county of.....
 the.....day of....., 190...., due.....
 with interest at...per cent, payable....., 190.....\$
 Cash on hand and deposited in.....bank.....\$

\$ \$

In my opinion all of said investments are good.

§ 222. Cancellation of bonds.—All such bonds and coupons thereof paid, shall be cancelled by the town board of the town, at a meeting thereof to be held for that purpose, within ten days previous to the annual town meeting; and a record thereof shall

Actions against officers.

be filed, signed by the board, in the office of the clerk of the town.

Town Law, § 214; 3 R. S. 3240.

For report to clerk of board of supervisors, see § 52, County Law.

§ 223. **Actions against officers, etc.**—Any *bona fide* purchaser and holder of any bonds or other obligations for the payment of money payable to bearer and transferable by delivery, and any such purchaser and holder of any interest-bearing coupon or obligation originally attached to such bonds, which said bonds or coupon shall have been issued or put in circulation by means of the misfeasance, malfeasance or negligence of any public officer, of any of the civil or municipal divisions of this State, whose right of recovery or cause of action upon any such bond or coupon has been, or shall be, determined by the judgment of a court of competent jurisdiction in any suit or action, or who has been or shall be a privy to such suit or action, may within three years after the determination of said right of recovery and cause of action begin an action against such officer, and recover all damages which said purchaser, holder or privy shall have suffered because of the misfeasance, malfeasance or negligence of such public officer.

Laws 1895, chap. 792, § 1; 2 R. S. 2110.

§ 224. **Same, by municipal corporation.**—Any municipal corporation within this State, or any civil division of the State, which has been or shall be compelled to pay any negotiable bond, or any coupon originally attached to such bond, by the judgment of a court of competent jurisdiction, because of the misfeasance, malfeasance or negligence of any public officer or agent of such municipal corporation or civil division, may within three years from the time when such payment shall have been compelled as aforesaid, begin an action against any such officer in any court of competent jurisdiction and recover the amount so paid with interest from the time of such payment.

Laws 1895, chap. 792, § 2.

§ 225. **Limitation of time.**—No limitation of the time for commencing an action shall affect any of the actions hereinbefore mentioned, except as herein provided, and in such action an order of arrest and an execution against the person of the defendant may be issued in the manner and form provided by the Code of

Appeals.

Civil Procedure against a person who shall have wrongfully misappropriated money held by him in a fiduciary capacity.

Laws 1895, chap. 792, § 3.

§ 226. **Appeals, etc.**—In any suit or action upon any coupon or coupons hereinbefore mentioned, or upon any bonds hereinbefore mentioned, or to recover any damages hereinbefore mentioned, any party to such action shall have and is hereby granted a right to appeal to the general term or appellate division of the Supreme Court from the judgment of any trial court, or to the court of appeals from any judgment of the general term or of the appellate division of the Supreme Court, although the amount in controversy in such action has been or may be less than five hundred dollars. Appeals from any inferior court to any appellate court, including an appeal to the Court of Appeals, although the amount in controversy may be less than five hundred dollars, from any judgment in any suit or action to recover against any municipal corporation or civil division of this State upon any negotiable bonds or upon any coupon originally attached thereto, issued or put in circulation by the agents or officers, of such municipal corporations or civil division of this State, may be taken by any person who has been or shall be bound as a privy by such judgment within sixty days after such privy shall have been served by any of the parties to such civil action, with a copy of the said judgment and with a written notice of the entry thereof, and said appeal may be taken in the name of such party without entering an order of substitution as such party by said person so bound as a privy, upon his giving the security and serving the notices of appeal prescribed by the Code of Civil Procedure concerning an appeal by a party to such an action, and also upon giving to the party in whose name such an appeal is taken an undertaking with two sufficient sureties conditioned in the penal sum of five hundred dollars, to save such party to such action in whose name such appeal shall be taken harmless of and from all costs and disbursements which may be recovered against him upon such appeal, which said undertaking shall be approved as to its form and as to the sufficiency of the sureties thereon by justices of the Supreme Court. Said appeal, when so taken by said privy, shall be conducted and determined in the same manner as if taken by said party of the said action, except as herein otherwise provided.

Laws 1895, chap. 192, § 4.

Definition, expenditures.

§ 227. **Definition of municipal corporation.**—The term “municipal corporation,” used in this chapter, includes only a county, town, city and village, and the term “governing board” includes the board of supervisors of a county, the town board of a town, the common council of a city and the board of trustees of a village.

Municipal Law, § 1; 2 R. S. 2100.

Municipal corporation is also defined in the General Corporation Laws as follows: “A municipal corporation includes a county, town, school district, village and city, and any other territorial division of the state established by law with powers of local government.”

Gen. Corp. Laws, § 2.

§ 228. **Investigation of expenditures of towns and villages.**—If twenty-five freeholders in any town or village shall present to a justice of the Supreme Court of the judicial district in which such town or village is situated, an affidavit, stating that they are freeholders and have paid taxes on real property within such town or village within one year, that they have reason to believe that the moneys of such town or village are being unlawfully or corruptly expended, and the grounds of their belief, such justice, upon ten days’ notice to the supervisor, and the officers of the town disbursing the funds to which such moneys belong, or the trustees and treasurer of the village, shall make a summary investigation into the financial affairs of such town or village, and the accounts of such officers, and, in his discretion, may appoint experts to make such investigation, and may cause the result thereof to be published in such manner as he may deem proper.

The cost incurred in such investigation shall be taxed by the justice, and paid, upon his order, by the officers whose expenditures are investigated, if the facts in such affidavit be substantially proved, and otherwise, by the freeholders making such affidavit. If such justice shall be satisfied that any of the moneys of such town or village are being unlawfully or corruptly expended, or are being appropriated for purposes to which they are not properly applicable, or are improvidently squandered or wasted, he shall forthwith grant an order restraining such unlawful or corrupt expenditure, or such other improper use of such moneys.

Municipal Law, § 3; 2 R. S. 2101.

An appeal lies to the Appellate Division from an order of the judge restraining the payment of portions of a bill of the town board of audits and charging the cost upon the members of the board and others whose accounts were examined.

Matter of Hempstead, 32 A. D. 6.

Suits.

The adjudication of a board of audit proceeding regularly within its jurisdiction, establishing a claim against a town, although the allowance may be excessive or although it may err in its conclusions upon the facts, does not constitute waste or injury to the property of the town within this act.

N. Y. C. R. Co. v. Main, 54 St. Rep. 384.

In summary proceedings under the statute for the investigation of the finance affairs of a village, it is not proper to appoint one of the complainants as an expert to make the investigation at least without the consent of all parties.

Matter of Plattsburgh, 157 N. Y. 78.

A taxpayer cannot maintain the action where it is shown that the officer of the municipality acted in good faith and with no intent or purpose to injure or defraud a taxpayer unless the act complained of was beyond his authority and wholly illegal and void.

N. Y. C. R. Co. v. Main, 54 St. Rep. 384.

Under Chapter 307 of the Laws of 1879 providing for summary investigation of unlawful and corrupt expenditures of village officers, a justice has no power to investigate or correct evils resulting from mere error in judgment and foolish expenditures, but only where there has been either an unlawful or corrupt expenditure.

Matter of Syracuse, 20 Abb. N. C. 131.

The Court of Appeals may review an order made by the justice of the Supreme Court and affirmed by the Appellate Division as a final order in the special proceeding.

Matter of Plattsburgh, 157 N. Y. 78.

The special proceedings herein are within the meaning of Sections 3383 and 3334 of the Code of Civil Procedure.

Matter of Hempstead, 32 App. Div. 6.

§ 229. **Suits under the Code of Civil Procedure.**—An action to obtain a judgment, preventing waste of or injury to the estate, funds or other property of a county, town, city or incorporated village of the State, may be maintained against any officer thereof, or any agent, commissioner or other person acting in its behalf, by a citizen resident therein, who is assessed for and is liable to pay, or, within one year before the commencement of the action, has paid, a tax therein. This section does not affect any right of action in favor of a county, city, town or incorporated village, or any public officer.

Code Civ. Pro., §1925.

An action in equity brought by a taxpayer to have bonds cancelled should be brought promptly and lateness may defeat the action.

Alvord v. Syracuse Bk., 98 N. Y. 699; T. of Mertz v. Cook, 18 N. Y. 510.

An action by a taxpayer to restrain the governing body from official action within its power and discretion without any charge of fraud, collusion, corruption or bad faith cannot be maintained, although it is alleged that such intended action is unwise and without due regard to economy.

Talcott v. Buffalo, 125 N. Y. 288; Govers v. Bd. Sup. W. Co., 171 N. Y. 408.

Prosecution of officials.

A taxpayer's action will be only when the acts complained of are without the power of the officers to do or when their action is corrupt, fraudulent or in bad faith. Any other construction of the statute would subject the discretionary power of the officers to review of the courts at a suit by taxpayer.

Talcott v. Buffalo, 125 N. Y. 288; Green v. Knox, 76 N. Y.

If the mayor refuses to appoint under civil service rule or makes erroneous appointment mandamus is the proper remedy and a taxpayer's action to enjoin payment to a person improperly holding office is not proper remedy.

Chittenden v. Wurster, 152 N. Y. 345.

§ 230. **Prosecution of officials for illegal acts, etc.**—All officers, agents, commissioners and other persons acting, or who have acted, for and on behalf of any county, town, village or municipal corporation in this State, and each and every one of them, may be prosecuted, and an action or actions may be maintained against them to prevent any illegal official act on the part of any such officers, agents, commissioners or other persons, or to prevent waste or injury to, or to restore and make good, any property, funds or estate of such county, town, village or municipal corporation by any person or corporation whose assessment, or by any number of persons or corporations, jointly, the sum of whose assessments shall amount to one thousand dollars, and who shall be liable to pay taxes on such assessment or assessments in the county, town, village or municipal corporation to prevent the waste or injury of whose property the action is brought, or who have been assessed or paid taxes therein upon any assessment or assessments of the above-named amount within one year previous to the commencement of any such action or actions. Such person or persons, corporation or corporations upon the commencement of such action, shall furnish a bond to the defendant therein, to be approved by a justice of the Supreme Court or the county judge of the county in which the action is brought, in such penalty as the justice or judge approving the same shall direct, but not less than two hundred and fifty dollars, and to be executed by any two of the plaintiffs, if there be more than one party plaintiff, providing said two parties plaintiff shall severally justify in the sum of five thousand dollars. Said bond shall be approved by said justice or judge and be conditioned to pay all costs that may be awarded the defendant in such action if the court shall finally determine the same in favor of defendant. The court shall require, when the plaintiffs shall not justify as above mentioned, and in any case may require two more sufficient sureties to execute the bond above provided for. Such

Prosecution of officials.

bond shall be filed in the office of the county clerk of the county in which the action is brought, and a copy shall be served with the summons in such action. If an injunction is obtained as herein provided for, the same bond may also provide for the payment of the damages arising therefrom to the party entitled to the money, the auditing, allowing, or paying of which was enjoined, if the court shall finally determine that the plaintiff is not entitled to such injunction. In case the waste or injury complained of consist in any board, officer or agent in any county, town, village or municipal corporation, by collusion or otherwise, contracting, auditing, allowing or paying, or conniving at the contracting, audit, allowance or payment of any fraudulent, illegal, unjust or inequitable claims, demands or expenses, or any item or part thereof against or by such county, town, village or municipal corporation, or by permitting a judgment or judgments to be recovered against such county, town, village or municipal corporation, or against himself in his official capacity, either by default or without interposition and proper presentation of any existing legal or equitable defenses, or by any such officer or agent, retaining or failing to pay over to the proper authorities any funds or property of any county, town, village or municipal corporation, after he shall have ceased to be such officer or agent, the court may, in its discretion, prohibit the payment or collection of any such claims, demands, expenses or judgments, in whole or in part, and shall enforce the restitution and recovery thereof, if heretofore or hereafter paid, collected or retained by the person or party heretofore or hereafter receiving or retaining the same, and also may, in its discretion, adjudge and declare the colluding or defaulting official personally responsible therefor, and out of his property, and that of his bondsmen, if any, provide for the collection or repayment thereof, so as to indemnify and save harmless the said county, town, village or municipal corporation from a part or the whole thereof; and in case of a judgment, the court may, in its discretion, vacate, set aside and open said judgment, with leave and direction for the defendant therein to interpose and enforce any existing legal or equitable defense therein, under the direction of such person as the court may, in its judgment or order, designate and appoint. All books of minutes, entry or account, and the books, bills, vouchers, checks, contracts or other papers connected with or used or filed in the office of, or with any officer, board or commission acting for or on

Funds illegally appropriated.

behalf of any county, town, village or municipal corporation in this State are hereby declared to be public records, and shall be open, subject to reasonable regulations to be prescribed by the officer having the custody thereof, to the inspection of any taxpayer. This section shall not be so construed as to take away any right of action from any county, town, village or municipal corporation, or from any public officer, but any right of action now existing, or which may hereafter exist, in favor of any county, town, village or municipal corporation, or in favor of any officer thereof, may be enforced by action or otherwise by the persons hereinbefore authorized to prosecute and maintain actions; and whenever by the provisions of this section an action may be prosecuted or maintained against any officer or other person, his bondsmen, if any, may be joined in such action or proceeding and their liabilities as such enforced by the proper judgment or direction of the court; but any recovery under the provisions of this act shall be for the benefit of and shall be paid to the officer entitled by law to hold and disburse the public moneys of such county, town, village or municipal corporation, and shall, to the amount thereof, be credited the defendant in determining his liability in the action by the county, town, village or municipal corporation or public officer. The provisions of this act shall apply as well to those cases in which the body, board, officer, agent, commissioner or other person above named has not, as to those in which it or he has jurisdiction over the subject-matter of its action.

Laws 1881, chap. 521, as am'd by chap. 301, Laws 1892; 3 R. S. 3157, Decisions: Warren v. Baldwin, 105 N. Y. 534; Talcott v. Buffalo, 125 N. Y. 280; Sweet v. Syracuse, 129 N. Y. 316; Boyers v. O'Brien, 153 N. Y. 362.

§ 231. **Actions for funds, etc., illegally appropriated.**—Where any money, funds, credits or other property held or owned * * * officially or otherwise, for or in behalf of a governmental or other public interest, by a domestic, municipal or other public corporation, or by a board, officer, custodian, agency or agent of the State, or of a city, county or town * * * has been or is hereafter, without right, obtained, received, converted or disposed of, an action to recover the same, or to recover damages or other compensation for so obtaining, receiving, paying, converting or disposing of the same or both, may be maintained

Disposition of proceeds of action.

by the people of the State in any court of the State, having jurisdiction thereof. * * *

Code of Civ. Pro., § 1969.

§ 232. **Title to, vests in the people.**—Upon the commencement by the people of the State of any action, suit or other judicial proceeding, as prescribed in this article, the entire cause of action, including the title to the money, funds, credits or other property, with respect to which the suit or action is brought, and to the damages or other compensation recoverable for the obtaining, receipt, payment, conversion or disposition thereof, if not previously so vested, is transferred to and becomes absolutely vested in the people of the State.

Code Civ. Pro., § 1972.

§ 233. **Ultimate disposition of proceeds of action in court of the State.**—Any court of the State, in which an action is brought by the people, as prescribed in this article, may by the final judgment therein, or by a subsequent order, direct that any money, funds, damages, credits or other property, recovered by, or awarded to, the plaintiff therein, which, if that action had not been brought, would not have vested in the people, be disposed of, as justice requires, in such manner as to reinstate the lawful custody thereof, or to apply the same, or the proceeds thereof, to the objects and purposes for which they were authorized to be raised or procured; after paying into the State treasury, out of the proceeds of the recovery, all expenses incurred by the people in the action.

Code Civ. Pro., § 1974.

§ 234. **Upon petition of corporation, etc., aggrieved.**—Any corporation, board, officer, custodian, agency or agent, may, in behalf of any city, county, town, village or other division, subdivision, department or portion of the state, which was not a party to an action, brought as prescribed in this article, and which claims to be entitled to the custody or disposition of any of the money, funds, damages, credits or other property, recovered by or awarded to the plaintiff, by the final judgment in the action, or any of the proceeds thereof, and not disposed of as prescribed in the last section, present, at any time after the actual collection of the money, and its payment into the State treasury, or the actual receipt of the property by the people, to the Supreme

Jurisdiction.

Court, at a special term thereof held in the county of Albany, a verified petition, setting forth the facts, and praying for the relief to which he or it is entitled. Notice of the application and a copy of the petition must be served upon the attorney-general. Upon the hearing the court may make such a final order, as justice requires, for the disposition of the money or other property, as prescribed in the last section.

Code Civ. Pro., § 1975.

§ 235. **Jurisdiction of Court of Claims.**—SECTION 1. Any county of this state, containing one or more towns, villages or cities which have heretofore issued bonds to aid in the construction of any railroad passing through such towns, cities or villages, may present to the Court of Claims a claim for the amount of state taxes collected from or paid by any such railroad within the several towns, villages or cities of such county which were so bonded to aid in the construction of any such railroad, since the eighteenth day of May, eighteen hundred and sixty-nine, and which said taxes were paid by the county treasurer of such county to the state treasurer. Jurisdiction is hereby conferred upon the Court of Claims to hear, audit and determine such claims and to make awards and render judgments therefor against the State and in favor of such claimants, without interest thereon.

§ 2. The amount which shall be awarded to any county as provided in section one of this act, shall be paid to the county treasurer of such county; and such county treasurer shall invest and apply the same in the manner and for the purposes provided by section four of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine, entitled “An act to amend an act entitled ‘An act to authorize the formation of railroad companies and to regulate the same,’ passed April second, eighteen hundred and fifty, so as to permit municipal corporations to aid in the construction of such railroads,” and the acts amendatory thereof; except that in case such county shall have heretofore paid to any such town, village or city, such state taxes or any portion thereof, or in case such county treasurer has heretofore set aside such state taxes or any portion thereof, for the benefit of such town, village or city, in the manner provided by said section four of chapter nine hundred and seven of the laws of eighteen hundred and sixty-nine and the acts amendatory thereof, then and in that case, such moneys or the portion thereof so paid or set aside as

Jurisdiction.

aforesaid, shall be used and applied by such county treasurer for the general purposes of the county.

§ 3. No award shall be made or judgment rendered herein against the State, unless the facts proved shall make out a case against the State, which would create a liability, were the same established in a court of law or equity against an individual or corporation or municipality; and in case such liability shall be satisfactorily established, then the court of claims shall award to and render judgment for the claimants for such sums as shall be just and equitable, notwithstanding the lapse of time since the accruing of said damages, provided any claim hereunder shall be filed with the court of claims within one year after the passage of this act.

Laws 1899, chap. 336.

CHAPTER EIGHT.

PUBLIC OFFICERS.

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| §236. Officials not to be interested in contracts. | §244. Intrusion into public office. |
| §237. Misappropriation by public officers, etc. | §245. Refusing to surrender to cessor. |
| §238. Other violations of law. | §246. Neglect of duty. |
| §239. Acting without having qualified. | §247. Political assessments. |
| §240. Acts of officer de facto. | §248. Corrupt use of office. |
| §241. Corrupt bargain for appointments. | §249. Failure to file statement of election expenses. |
| §242. Taking unlawful fees. | §250. Soliciting from candidates. |
| §243. Asking or receiving reward. | §251. Judicial candidates not to contribute. |
| | §252. Penalty. |

§ 236. **Officials not to be interested in contracts, etc.**—A public officer or school officer, who is authorized to sell or lease any property, or to make any contract in his official capacity, or to take part in making any such sale, lease or contract, who voluntarily becomes interested individually in such sale, lease or contract, directly or indirectly, except in cases where such sale, lease or contract, or payment under the same, is subject to audit or approval by the superintendent of public instruction, is guilty of a misdemeanor.

Penal Code, § 473.

§ 237. **Misappropriation, etc., and falsification of accounts by public officers.**—A public officer, or a deputy or clerk of any such officer, and any other person receiving money on behalf of, or for account of the people of this State, or of any department of the government of this State, or of any bureau or fund created by law and in which the people of this State are directly or indirectly interested, or for or on account of any city, county, village or town, who

1. Appropriates to his own use, or to the use of any person not entitled thereto, without authority of law, any money so received by him as such officer, clerk or deputy, or otherwise; or

2. Knowingly keeps any false account, or makes any false entry or erasure in any account of, or relating to, any money so received by him; or

Violations of law.

3. Fraudulently alters, falsifies, conceals, destroys or obliterates any such account; or

4. Willfully omits or refuses to pay over to the people of this State or their officer or agent authorized by law to receive the same, or to such city, village, county or town, or the proper officer or authority empowered to demand and receive the same, any money received by him as such officer when it is his duty, imposed by law, to pay over, or account for, the same;

Is guilty of felony.

Penal Code, § 470.

Peculation of public funds, whether the offender is an agent, officer or servant having the funds or property, charged to have been misappropriated is covered by this section.

Bank v. People, 91 N. Y. 5.; People v. Lyon, 1 N. Y. Cr. Rep. 400.

§ 238. **Other violations of law.**—An officer or other person mentioned in the last section who willfully disobeys any provision of law regulating his official conduct, in cases other than those specified in that section, is guilty of a misdemeanor, punishable by a fine not exceeding \$1,000, or imprisonment not exceeding two years, or both.

Penal Code, § 471.

§ 239. **Acting in a public office without having qualified.**—A person who executes any of the functions of a public office without having taken and duly filed the required oath of office, or without having executed and duly filed the required security, is guilty of a misdemeanor, as prescribed by law.

Penal Code, § 42.

§ 240. **Acts of officer de facto not affected.**—The last section must not be construed to affect the validity of acts done by a person exercising the functions of a public office in fact, where other persons than himself are interested in maintaining the validity of such acts.

Penal Code, § 43.

The acts of a de facto officer are valid as regards the public.

Fort v. Stiles, 57 N. Y. 399.

An officer de facto is one who exercises the duty of an officer upon color of right as distinguished from a mere usurper.

Roch & G. V. R. v. Peabody, 6 Abb. 228; Conover v. Devlin, 15 How. 470.

§ 241. **Corrupt bargain for appointments, etc.**—A person who asks or receives, or agrees to receive, any gratuity or reward, or

Unlawful fees.

any promise thereof, for appointing another person, or procuring for another person an appointment to a public office or to a clerkship, deputation, or other subordinate position in such an office, is guilty of a misdemeanor. If the person so offending is a public officer, a conviction also forfeits his office.

Penal Code, § 53.

An agreement made between A. and B., rival candidates for the same office, whereby A, withdrew and ran for another office, B. promising to pay A. all his past and future expenses. *Held*, contract void.

Robinson v. Kulffluech, 5 Thom. & Cook, 212.

An agreement by a deputy sheriff to allow to his principal a sum in gross not payable out of his profits in office, and which might exceed his profits in office, is a violation of the statute.

Becker v. Ten Eyck, 6 Paige, 68; Tappan v. Brown, 9 Wend. 175.

When two persons apply to the governor to be appointed and one withdraws by agreement and in consideration of which fees and emoluments of office are to be divided between them, the contract is void.

Gray v. Hook, 4 N. Y. 449.

§ 242. **Taking unlawful fees.**—A public officer or a deputy clerk, assistant or other subordinate of a public officer, or any person appointed or employed by or in the office of a public officer, who shall, in any manner, act for or in behalf of any such officer, who asks or receives, or consents or agrees to receive, any emolument, gratuity or reward, or any promise of emolument, gratuity or reward, or any money, property or thing of value or of personal advantage, except such as may be authorized by law for doing or omitting to do any official act, or for performing or omitting to perform, or for having performed or omitted to perform any act whatsoever directly or indirectly related to any matter in respect to which any duty or discretion is by or in pursuance of law imposed upon or vested in him, or may be exercised by him by virtue of his office, or appointment or employment or his actual relation to the matter, shall be guilty of a felony, punishable by imprisonment for not more than ten years or by a fine of not more than four thousand dollars, or both.

Penal Code, §§ 48 and 50.

Taking fees for services not rendered.

An executive officer who asks or receives any fee or compensation for any official service which has not been actually rendered, except in cases of charges for prospective costs or fees demandable in advance in the cases allowed by law, is guilty of a misdemeanor.

Penal Code, § 50.

§ 243. **Asking or receiving reward for omitting or delaying official acts.**—An executive officer who asks or receives any emolu-

Intrusion into public office, refusing to surrender, neglect of duty.

ment, gratuity or reward, or any promise of any emolument, gratuity or reward, for omitting or deferring the performance of any official duty, is guilty of a misdemeanor.

Penal Code, § 49.

§ 244. **Intrusion into public office.**—A person who willfully intrudes himself into a public office, to which he has not been duly elected or appointed, or who, having been an executive or administrative officer, willfully exercises any of the functions of his office, after his right so to do has ceased, is guilty of a misdemeanor.

Penal Code, § 56.

As to a decision under this section see *Matter of Gray*, 2 N. Y. Cr. 307; *Meechan's Public Officers*, § 321.

§ 245. **Officer refusing to surrender to successor.**—A person who, having been an executive or administrative officer, wrongfully refuses to surrender the official seal, or any books or papers, appertaining to his office, upon the demand of his lawful successor, is guilty of a misdemeanor.

Penal Code, § 57.

The judge has no right to enforce the delivery of books and papers unless the applicant's title to the office is clear and free from reasonable doubt.

People v. Stevens, 5 Hill, 616; *Devlin's Case*, 5 Abb. Pr. 281; *Matter of Whitney*, 1. Edm. Select Cases 498.

A person holding office after the legal appointment of his successor and refusing to deliver the books and papers. *Held*, a proper case for the issuing of a warrant under the statute.

Matter of Whitney, 2 Barb. 513; *Welch v. Cook*, 7 How. 282; 11 How. 418; 19 How. 323; 9 How. 414.

§ 246. **General provisions as to neglect of duty.**—A public officer, or person holding a public trust or employment, upon whom any duty is enjoined by law, who willfully neglects to perform the duty, is guilty of a misdemeanor. This and the preceding section do not apply to cases of official acts or omissions, the prevention or punishment of which is otherwise specially provided by statute.

Penal Code, § 117; see Penal Code, § 154.

When a commissioner wilfully neglected to perform his duty in proceedings against a person violating the Excise Law, *held* to be a misdemeanor.

People v. Meakin, 133 N. Y. 214.

As to neglect of official duty of board of education see

Williams v. People, 15 Week Dig. 317; *People v. Com. Council*, 16 Abb. N. C. 6, 114.

Political assessments.

All officers from whom oaths and affidavits may be taken are bound to administer them when called upon so to do, and a refusal is a misdemeanor.

People v. Brooks, 1 Den. 457.

An officer of a municipal corporation is a public officer with this section.

People v. Bedell, 2 Hill, 196.

A public officer cannot waive irregularities or statutory requirements.

People v. Wemple, 38 St. Rep. 17.

§ 247. **Political assessments.**—Any person who,

1. Being an officer or employe of the state, or of a political subdivision thereof, directly or indirectly uses his authority or official influence to compel or induce any other officer or employe of the State or a political subdivision thereof, to pay or promise to pay any political assessments; or.

2. Being an officer or employe of the State, or of a political subdivision thereof, directly or indirectly gives, pays or hands over to any other such officer or employe any money or other valuable thing on account of or to be applied to the promotion of his election, appointment or retention in office, or makes any promise, or gives any subscription to such officer or employe to pay or contribute any money or other valuable thing for any such purpose or object; or

3. Being such an officer or employe and having charge or control of any building, office or room occupied for any purpose of the State or of a political subdivision thereof, consents that any person enter the same for the purpose of making, collecting, receiving or giving notice of any political assessment; or

4. Enters or remains in any such office, building or room, or sends or directs any letter or other writing thereto, for the purpose of giving notice of demanding or collecting, or being therein, gives notice of, demands, collects or receives, any political assessment;

5. Prepares or makes out, or takes any part in preparing or making out, any political assessment, subscription or contribution, with the intent that the same shall be sent or presented to or collected of any such officer or employe; or

6. Sends or presents any political assessment, subscription, or contribution to, or requests its payment of, any such officer or employe,

Is guilty of a misdemeanor.

Penal Code, § 41u, added by Laws 1892, chap. 693.

Corrupt use of position, failure to file statement of expenses.

§ 248. **Corrupt use of position or authority.**—Any person who,

1. While holding a public office, or being nominated or seeking a nomination or appointment therefor, corruptly uses or promises to use, directly or indirectly, any official authority or influence possessed or anticipated, in the way of conferring upon any person, or in order to secure, or aid any person in securing, any office or public employment, or any nomination, confirmation, promotion or increase of salary, upon consideration that the vote or political influence or action of the person so to be benefited or of any other person, shall be given or used in behalf of any candidate, officer or party or upon any other corrupt condition or consideration; or.

2. Being a public officer or employe of the State or a political subdivision having, or claiming to have, any authority or influence affecting the nomination, public employment, confirmation, promotion, removal or increase or decrease of salary of any public officer or employe, or promises or threatens to use, any such authority or influence, directly or indirectly to affect the vote or political action of any such public officer or employe, or on account of the vote or political action of such officer or employe; or

3. Makes, tenders or offers to procure, or cause any nomination or appointment for any public office or place, or accepts or requests any such nomination or appointment, upon the payment or contribution of any valuable consideration, or upon an understanding or promise thereof; or

4. Makes any gift, promise or contribution to any person, upon the condition or consideration of receiving an appointment or election to a public office or a position of public employment, or for receiving or retaining any such office or position, or promotion, privilege, increase of salary or compensation therein, or exemption from removal or discharge therefrom, is punishable by imprisonment for not more than two years or by a fine of not more than three thousand dollars, or both.

Penal Code, § 41v, added by Laws 1892, chap. 693.

§ 249. **Failure to file candidate's statement of expenses.**—

Every candidate who is voted for at any public election held within this State shall, within ten days after such election, file as hereinafter provided an itemized statement showing in detail all the moneys contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his

Soliciting from candidates, etc.

election. Such statement shall give the names of the various persons who received such moneys, the specific nature of each item, and the purpose for which it was expended or contributed. There shall be attached to such statement an affidavit subscribed and sworn to by such candidate, setting forth in substance that the statement thus made is in all respects true, and that the same is a full and detailed statement of all moneys so contributed or expended by him, directly or indirectly, by himself or through any other person, in aid of his election. Candidates for offices to be filled by the electors of the entire State, or any division or district thereof greater than a county, shall file their statements in the office of secretary of state. The candidates for town, village and city offices, excepting in the city of New York, shall file their statements in the office of the town, village or city clerk, respectively, and in cities wherein there is no city clerk, with the clerk of the common council of the city wherein the election occurs. Candidates for all other offices, including all officers in the city and county of New York, shall file their statements in the office of the clerk of the county wherein the election occurs. Any candidate for office who refuses or neglects to file a statement as prescribed in this section shall be guilty of a misdemeanor, and shall also forfeit his office.

Penal Code, § 41w, added by Laws 1892, chap. 693.

§ 250. **Soliciting from candidates.**—Any person who solicits from a candidate for an elective office money or other property, or who seeks to induce such candidate who has been placed in nomination to purchase any ticket, card or evidence of admission to any ball, picnic, fair or entertainment of any kind, is guilty of a misdemeanor; but this section shall not apply to a request for a contribution of money by an authorized representative of the political party, organization or association to which such candidate belongs.

Penal Code, part of § 41z, as am'd by Laws 1906, chap. 503.

§ 251. **Judicial candidates not to contribute.**—No candidate for a judicial office shall, directly or indirectly, make any contribution of money or other thing of value, nor shall any contribution be solicited of him; but a candidate for a judicial office may make such legal expenditures other than contributions, as are authorized by section forty-one of this act.

Penal Code, part of § 41z, as am'd by Laws 1906, chap. 503.

Penalty.

§ 252. **Penalty.**—Any person convicted of a misdemeanor under this title shall for a first offense be punished by imprisonment for not more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars, or by both such fine and imprisonment. Any person convicted of a misdemeanor under this title for a second or subsequent offense shall be guilty of a felony.

Penal Code, § 41zz as am'd by Laws 1906, chap. 503.

CHAPTER NINE.

THE TAX LAW.

Chapter xxiv of the General Laws.

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| Art. | 1. Taxable property and place of taxation. (§§ 1-15.) | 8. State board of tax commissioners, state board of equalization. (§§ 170-177.) |
| | 2. Mode of assessment. (§§ 20-47.) | 9. Corporation tax. (§§ 180-203.) |
| | 3. Equalization of assessment and levy of tax. (§§ 50-59.) | 10. Taxable transfers. (§§ 220-243.) |
| | 4. Collection of taxes. (§§ 70-95.) | 11. Procedure. (§§ 250-264.) |
| | 5. Collection of nonresident taxes. (§§ 100-109.) | 12. Laws repealed; when to take effect. (§§ 280-281.) |
| | 6. Sales by comptroller for unpaid taxes and redemption of lands. (§§ 120-143.) | 13. Limitation of time. (§ 282.) |
| | 7. Sales by county treasurers for unpaid taxes and redemption of lands. (§§ 150-158.) | 14. Mortgage debts secured by real property within this state. (§§ 290-314.) |
| | | 15. Tax on transfers of stock. (§§ 315-324.) |

ARTICLE I.

TAXABLE PROPERTY AND PLACE OF TAXATION.

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| § 1. Short title. | § 9. Place of taxation of real property. |
| § 2. Definitions. | § 10. Taxation of real property divided by line of tax district. |
| § 3. Property liable to taxation. | § 11. Place of taxation of property of corporations. |
| § 4. Exemption from taxation. | § 12. Taxation of corporate stock. |
| § 5. Taxation of lands leased or sold by the state. | § 13. Stockholders of bank taxable on shares. |
| § 6. No deduction allowed for indebtedness fraudulently contracted. | § 14. Place of taxation of individual bank capital. |
| § 7. When property of nonresidents is taxable. | § 15. Report of exempt property. |
| § 8. Place of taxation of property of residents. | |

Section 1. **Short title.**—This chapter shall be known as the tax law.

§ 2. **Definitions.**—1. “Tax district” as used in this chapter, means a political subdivision of the State having a board of assessors authorized to assess property therein for State and county taxes.

2. “County treasurer” includes any officer performing the duties devolving upon such office under whatever name.

Taxable property, definitions.

3. The terms "land," "real estate," and "real property," as used in this chapter, include the land itself above and under water, all buildings and other articles and structures, substructures and superstructures, erected upon, under or above, or affixed to the same; all wharves and piers, including the value of the right to collect wharfage, cranage or dockage thereon; all bridges, all telegraph lines, wires, poles and appurtenances; all supports and inclosures for electrical conductors and other appurtenances upon, above and under ground; all surface, under ground or elevated railroads, including the value of all franchises, rights or permission to construct, maintain or operate the same in, under, above, on or through, streets, highways, or public places; all railroad structures, substructures and superstructures, tracks and the iron thereon; branches, switches and other fixtures permitted or authorized to be made, laid or placed in, upon, above or under any public or private road, street or ground; all mains, pipes and tanks laid or placed in, upon, above or under any public or private street or place for conducting steam, heat, water, oil, electricity or any property, substance or product capable of transportation or conveyance therein or that is protected thereby, including the value of all franchises, rights, authority or permission to construct, maintain or operate, in, under, above, upon, or through, any streets, highways or public places, any mains, pipes, tanks, conduits, or wires, with their appurtenances, for conducting water, steam, heat, light, power, gas, oil, or other substance, or electricity for telegraphic, telephonic or other purposes; all trees and underwood growing upon land, and all mines, minerals, quarries and fossils in and under the same, except mines belonging to the State. A franchise, right, authority or permission specified in this subdivision shall for the purpose of taxation be known as a "special franchise." A special franchise shall be deemed to include the value of the tangible property of a person, copartnership, association or corporation situated in, upon, under or above any street, highway, public place or public waters in connection with the special franchise. The tangible property so included shall be taxed as a part of the special franchise. No property of a municipal corporation shall be subject to a special franchise tax. (*Thus amended by L. 1899, chap. 712, taking effect October 1, 1899.*)

This subdivision was amended by what is known as the "Franchise Tax Law." Sections 42, 43, 44, 45, 46 and 47 were added to Article II of the Tax Law, and sections 21, 31 and 37 were amended by the same law.

Taxable property and place of taxation.

4. The term special franchise shall not be deemed to include the crossing of a street, highway or public place where such crossing is not at the intersection of another street or highway, unless such crossing shall be at other than right angles for a distance of not less than two hundred and fifty feet, in which case the whole of such crossing shall be deemed a special franchise. This subdivision shall not apply to any elevated railroad. (*Inserted by L. 1901, chap. 490, taking effect April 23, 1901.*)

5. The terms "personal estate," and "personal property," as used in this chapter, include chattels, money, things in action, debts due from solvent debtors, whether on account, contract, note, bond or mortgage; debts and obligations for the payment of money due or owing to persons residing within the State; however secured or wherever such securities shall be held; debts due by inhabitants of this State to persons not residing within the United States for the purchase of any real estate; public stocks, stocks in moneyed corporations, and such portion of the capital of incorporated companies, liable to taxation on their capital, as shall not be invested in real estate. (*Subdivision renumbered by L. 1901, chap. 490, taking effect April 23, 1901.*)

§ 3. **Property liable to taxation.—**

For Tax Law, § 3. See § 22, ante.

§ 4. **Property exempt from taxation.—**

For Tax Law, § 4. See §§ 34-21, ante.

§ 5. **Taxation of lands sold or leased by the State.—**All lands which have been sold by the State, although not conveyed, shall be assessed in the same manner as if such purchaser were the actual owner. Where land is leased by the State such leasehold interest, except in cases where by the terms of the lease the State is to pay the taxes imposed upon the property leased, shall be assessed to the lessee or occupant in the tax district where the land is situated. (*Thus amended by L. 1897, chap. 443.*)

§ 6. **No deduction allowed for indebtedness fraudulently contracted.—**

For Tax Law, § 6. See § 25, ante.

§ 7. **When property of nonresidents is taxable.—**

For Tax Law, § 7. See § 20, ante.

Taxable property and place of taxation.

§ 8. Place of taxation of property of residents.—

For Tax Law, § 8. See § 19, ante.

§ 9. Place of taxation of real property.—

For Tax Law, § 9. See § 32, ante.

§ 10. Taxation of real property divided by line of tax district.—

For Tax Law, § 10. See § 33, ante.

§ 11. Place of taxation of property of corporations.—

For Tax Law, § 11. See § 110, ante.

§ 12. Taxation of corporate stock.—

For Tax Law, § 12. See § 111, ante.

§ 13. Stockholders of bank taxable on shares.—

For Tax Law, § 13. See § 112, ante.

§ 14. Place of taxation of individual bank capital.—

For Tax Law, § 14. See § 113, ante.

§ 15. Report of exempt property.—

For Tax Law, § 15. See § 34, ante.

ARTICLE II.

MODE OF ASSESSMENT.

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§ 19. **Taxation and exemption of Colleges of Pharmacy.—**
For Tax Law, § 19. See § 31, ante.

§ 20. **Ascertaining facts for assessment.—**
For Tax Law, § 20. See §§ 9-47, ante.

§ 21. **Preparation of assessment roll.—**
For Tax Law, § 21. See §§ 10-25, ante.

§ 22. **Assessment of State lands in Forest Preserve.—**
For Tax Law, § 22. See § 48, ante.

§ 23. **Banks to make report.—**
For Tax Law, § 23. See § 114, ante.

§ 24. **Bank shares, how assessed.—**
For Tax Law, § 24. See § 115, ante.

§ 25. **Individual banker, how assessed.—**
For Tax Law, § 25, see § 116 ante.

Mode of assessment.

§ 26. Notice of assessment of bank or banking association.—

For Tax Law, § 26. See § 117, ante.

§ 27. Reports of Corporations.—

For Tax Law, § 27. See § 118, ante.

§ 28. Penalty for omission to make statement.—

For Tax Law, § 28. See § 119, ante.

§ 28a. County clerks to furnish data respecting corporations.—

For Tax Law, § 28a. See § 132, ante.

§ 29. Assessment of real property of nonresident.—

For Tax Law, § 29. See § 49, ante.

§ 30. Surveys and maps of nonresident real property.—

For Tax Law, § 30. See § 51, ante.

§ 31. Corporations how assessed.—

For Tax Law, § 31. See § 120, ante.

§ 32. Assessment of agent, trustee, guardian or executor.—

For Tax Law, § 32. See § 52, ante.

§ 33. Assessment of omitted property.—

For Tax Law, § 33. See § 53, ante.

§ 34. Debts owing to nonresidents of the United States, how assessed.—

For Tax Law, § 34. See § 54, ante.

§ 35. Notice of completion of assessment roll.—

For Tax Law, § 35. See § 11, ante.

§ 36. Hearing of complaints.—

For Tax Law, § 36. See § 12, ante.

§ 37. Correction and verification of tax roll.—

For Tax Law, § 37. See § 15, ante.

§ 38. Filing of roll and notice thereof.—

For Tax Law, § 38. See § 16, ante.

§ 39. Assessors to apportion valuation of railroad, telegraph, telephone, or pipe line companies between school districts.—

For Tax Law, § 39. See § 121, ante.

§ 40. Neglect or omission of duty by assessors.—

For Tax Law, § 40. See § 17, ante.

Mode of assessment.

§ 41. **Abandonment of lot divisions.—**

For Tax Law, § 41. See § 50, ante.

§ 42. **Assessment of special franchises.—**

For Tax Law, § 42. See § 27, ante.

§ 43. **Report of State board of tax commissioners.—** Every person, copartnership, association or corporation subject to taxation on a special franchise, shall, within thirty days after this section takes effect, or within thirty days after such special franchise is acquired, make a written report to the State board of tax commissioners containing a full description of every special franchise possessed or enjoyed by such person, copartnership, association or corporation, a copy of the special law, grant, ordinance, or contract under which the same is held, or if possessed or enjoyed under a general law, a reference to such law, a statement of any condition, obligation or burden imposed upon such special franchise, or under which the same is enjoyed, together with any other information relating to the value of such special franchise, required by the State board. The State board of tax commissioners may from time to time require a further or supplemental report from any such person, copartnership, association or corporation, containing information and data upon such matters as it may specify. Every report required by this section shall have annexed thereto the affidavit of the president, vice-president, secretary or treasurer of the association or corporation, or one of the persons or one of the members of the copartnership making the same, to the effect that the statements contained therein are true. Such board may prepare blanks to be used in making the reports required by this section. Every person, copartnership, association or corporation failing to make the report required by this section, or failing to make any special report required by the State board of tax commissioners within a reasonable time specified by it, shall forfeit to the people of the State the sum of one hundred dollars for every such failure and the additional sum of ten dollars for every day that such failure continues, and shall not be entitled to review the assessment by certiorari, as provided by section forty-five of this chapter.

§ 44. **Hearing on special franchise assessment.—** On making an assessment of a special franchise, the State board of tax commissioners shall immediately give notice in writing to the person, copartnership, association or corporation affected, and to each city or

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town in which such special franchise is subject to assessment, stating in substance that such assessment has been made, the total valuation of such special franchise, and the valuation thereof in each city, town or tax district; and that the board will meet at its office in the city of Albany on a day specified in such notice, which must not be less than twenty or more than thirty days from the date of the notice, to hear and determine any complaint concerning such assessment. But no notice need be given any such town unless the supervisor thereof shall at least fifteen days prior to the time fixed for such hearing file with said board a request in writing for notice thereof. Such notice must be served at least ten days before the day fixed for the hearing; and it may be served on a copartnership, association or corporation, by mailing a copy thereof to it at its principal office or place of business and on a person, either personally or by mailing it to him at his place of business or last known place of residence; and on a city or town by mailing it to the mayor of such city or the supervisor of such town at the address specified in such request. A city or town entitled to notice under this section, shall have the right to be heard and to file affidavits and other proofs in respect to the valuation of such special franchise. Section thirty-six of this chapter applies so far as practicable to a hearing by the State board of tax commissioners under this section. (*Added by L. 1899, chap. 712, taking effect October 1, 1899, and amended by L. 1906, chap. 458, taking effect May 15, 1906.*)

§ 45. Certiorari to review assessment.—

For Tax Law, § 45. See § 28, ante.

§ 45a. Id; appearance by State board by special counsel; payment of his costs, expenses and disbursements.—

For Tax Law, § 45a. See § 28, ante.

§ 46. Deduction from special franchise tax for local purposes.—

For Tax Law, § 46. See § 29, ante.

§ 47. Special franchise tax not to affect other tax.—

For Tax Law, § 47. See § 30, ante.

ARTICLE III.

EQUALIZATION OF ASSESSMENT AND LEVY OF TAX.

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| §50. Equalization by board of supervisors. | §55. Levy of tax by supervisors. |
| §51. Description of real property of nonresidents. | §56. Tax-roll and collector's warrant. |
| §52. Review of assessments against nonresident owners of rents reserved. | §57. Statement of taxes upon certain corporations by clerk of supervisors. |
| §53. Correction of errors by board of supervisors. | §58. Statement of valuation to be furnished to comptroller. |
| §54. Reassessment of property illegally assessed. | §59. Abstract of warrant to be furnished county treasurer. |
| | §60. Certain errors in roll to be corrected. |

§ 50. Subd. 1. **Equalization by board of supervisors.—**
For Tax Law, § 50. See § 65, ante.

§ 51. **Description of real property of nonresidents.—**
For Tax Law, § 51. See § 59, ante.

§ 52. **Review of assessment against nonresident owners of rents reserved.—**
For Tax Law, § 52. See § 59, ante.

§ 53. **Correction of errors by board of supervisors.—**
For Tax Law, § 53. See § 59, ante.

§ 54. **Reassessment of property illegally assessed.—**
For Tax Law, § 54. See § 59, ante.

§ 55. **Levy of tax by supervisors.—**
For Tax Law, § 55. See § 71, ante.

§ 56. **Tax-roll and collector's warrant.—**
For Tax Law, § 56. See § 73, ante.

§ 57. **Statement of taxes upon certain corporations by clerk of supervisors.—** The clerk of each board of supervisors shall, within five days after the tax warrant is completed, deliver to the county treasurer, a statement showing the names, valuation of property and the amount of tax of every railroad corporation and telegraph, telephone and electric-light line in each tax district in the county, and on refusal or neglect so to do, shall forfeit to the county the

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sum of one hundred dollars, to be sued for by the district attorney in the name of the county.

Duties of board of supervisors. See *People v. Hagedorn*, 104 N. Y. 516.

§ 58. **Statement of valuation to be forwarded to comptroller.**—The clerk of each board of supervisors shall, on or before the second Monday in December, transmit to the comptroller, in the form to be prescribed by such comptroller, a certificate or return of the aggregate assessed and equalized valuation of the real and personal estate in each tax district as the valuation of such real estate has been corrected by such board, and the amount of tax assessed thereon for town, city, school, county and State purposes. Also the names of the several incorporated companies liable to taxation in such county, the nature of their business, the amount of the capital stock paid in and secured to be paid in by each, the amount of real and personal property of each as put down by the assessors, or by it, the amount of taxes assessed on each, and the amount of personal property on which each such corporation is exempt on account of the payment of State taxes on its capital. In the city of New York such report shall be made by the clerk of the board of aldermen, and for the purpose of making such report he may require any department or board of such city to furnish the necessary information.

A certificate of real and personal estate shall be sent to comptroller. See *Mayor, etc., v. Davenport*, 92 N. Y. 604.

§ 59. **Abstract of warrant to be furnished county treasurer.**—On or before the twentieth day of December in each year, the clerk of the board of supervisors shall transmit to the treasurer of the county an abstract of the tax-rolls, stating the names of the collectors, the amount of money which each is to collect, the purpose for which it is to be collected, and the persons to whom and the time when it is to be paid. The county treasurer, on receiving such account, shall charge to each collector the amount to be collected by him.

Fake v. Whipple, 39 N. Y. 394.

§ 60. **Certain errors in roll to be corrected.**—The assessment of a nonresident parcel of real estate in the resident portion of the roll, the assessment of a resident parcel of real estate in the non-

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resident portion of the roll, an error in the name of the owner or occupant or the assessment of a parcel of real estate to the name of a deceased person or to his estate, shall not render the assessment invalid or render the tax levied on the valuation of said real estate invalid. The board of supervisors of each county may at any time before levying the tax as provided in article three of this act, at the request of the supervisor of the tax district in which the real estate is situated, correct any errors which may come to his knowledge in the assessment of any parcel of real estate in his district, in either of the cases mention in this section. (*Added by L. 1902, chap. 171, in effect April 4, 1902.*)

ARTICLE IV.

COLLECTION OF TAXES.

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| §70. Notice by collector. | §81. Fees of collector. |
| §70a. Notice to nonresidents. | §82. Return by collector of unpaid taxes. |
| §71. Collection of taxes. | §83. Return when collection has been enjoined. |
| §72. Collection of taxes assessed against stock in banks and banking associations. | §84. Payment of moneys collected. |
| §73. Payment of taxes by railroad and certain other corporations. | §85. Extension of time for collection. |
| §74. Enforcement of tax against telegraph, telephone and electric light lines. | §86. Appointment of collector in case of vacancy. |
| §75. Collection of taxes on rents reserved. | §87. When sheriff shall execute collector's warrant. |
| §76. Collection of unpaid taxes on debts owing to nonresidents of the United States. | §88. Satisfaction of collector's bond. |
| §77. Return of warrant for collection of taxes on debts owing to nonresidents; neglect to make return. | §89. Unpaid tax on resident real property to be reassessed. |
| §78. Remedy of tenant for taxes paid by him. | §90. Payment to creditors of the county. |
| §79. Payment of taxes on part of lot. | §91. Payment of state tax. |
| §80. Payment of taxes on state lands in forest preserve. | §92. Accounts of county treasurer with comptroller. |
| | §93. Losses by default of collector or treasurer. |
| | §94. Receipts for taxes. |
| | §95. Article, how applicable. |

§ 70. Notice by collector.—

For Tax Law, § 70. See § 77, ante.

§ 70a. Notice to nonresidents.—

For Tax Law, § 70a. See § 78, ante.

§ 71. Collection of taxes.—

For Tax Law, § 71. See § 79, ante.

§ 72. Collection of taxes assessed against stocks in banks and banking associations.— Every bank or banking association shall retain any dividend until the delivery to the collector of the tax-roll and warrant of the current year, and within ten days after such delivery, shall pay to such collector so much of such dividend as may be necessary to pay any unpaid taxes assessed on the stock upon which such dividend is declared. In case the owner of such stock resides in a place other than where the bank or banking association is located, the same power may be exercised in collecting

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the tax so assessed as is given in case a person has removed from a tax district in which the assessment was made. The tax so assessed shall be and remain a lien on the shares of stock against which it is assessed till the payment of such tax, and if the stock is transferred it shall be subject to such lien. The collector or county treasurer may foreclose such lien in any court of record, and collect from the avails of the sale of the stock the tax assessed against the same. In addition thereto, the same remedy may be had for the collection of the tax on such shares as is now provided by law for enforcing payment of personal tax against residents.

See *Ætna Ins. Co. v. Mayor*, 153 N. Y. 331.

Not applicable to non-resident owners of bank stock.

City of New York v. McLean, 57 App. Div. 601; 688 N. Y. Supp. (102 St. Rep.) 606.

§ 73. **Payment of taxes by railroad and certain other corporations.**—Any railroad, telegraph, telephone or electric-light company may, within thirty days after receipt of notice by the county treasurer from the clerk of the board of supervisors, pay its tax, with one per centum fees, to the county treasurer, who shall credit the same with such fees to the collector of the tax district, unless otherwise required by law. If not so paid the county treasurer shall notify the collector of the tax district where it is due, and he shall then proceed to collect under his warrant. Until such notice from the treasurer the collector shall not enforce payment of such taxes, but may receive the same, with the fees allowed by law, at any time.

As to disposition of railroad tax. See *Clark v. Sheldon*, 134 N. Y. 333.

§ 74. **Enforcement of tax against telegraph, telephone and electric-light lines.**—Collection of tax against a telegraph, telephone or electric-light line may be enforced by sale of the instruments and batteries connected with such line, and in case there is not sufficient personal property, together with such instruments and batteries, to pay such tax and the percentage due the collector, he shall return a statement thereof to the company treasurer as other unpaid taxes are returned, and the county treasurer shall proceed to sell such part of the line in the tax district where the tax was levied as may be necessary to satisfy the unpaid taxes and percentage, in the manner now provided by law for the sale of lands on execution, and upon such sale shall

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execute to the purchaser a conveyance of such part of said line, and the purchaser shall thereupon become the owner thereof. Nothing herein contained shall be construed to prevent collection of such taxes by any procedure now provided by law.

§ 75. **Collection of taxes on rents reserved.**— If any tax upon any such tax-roll upon rents reserved is not paid, the collector shall collect the same by levy and sale of the personal property of the persons against whom the tax is levied, which may be found within the county. If no sufficient personal property belonging to such person can be found in the county, the collector shall collect such tax of the tenant or lessee in possession of the premises, on which the rent is reserved, in the same manner as if such tax had been assessed against such tenant or lessee. Every such tenant or lessee paying any such tax, or of whom any such tax shall be collected, shall be entitled to have the amount thereof, with interest, deducted from the amount of rent reserved upon such premises, which may be due or may thereafter become due thereon, or may maintain an action to recover the same.

§ 76. **Collection of unpaid taxes on debts owing to nonresidents of the United States.**—

For Tax Law, § 76. See § 82, ante.

§ 77. **Return of warrant for collection of taxes on debts owing to nonresidents.**—Neglect to make return.—

For Tax Law, § 77. See § 83, ante.

§ 78. **Remedy of tenant for taxes paid by him.**— If a tax upon real property shall have been collected of any occupant or tenant, and any other person, by agreement or otherwise, ought to pay such tax, or any part thereof, such occupant or tenant shall be entitled to recover, by action, the amount which such person ought to have paid; or to retain the same from any rent due or accruing from him to such person for the land so taxed.

Tenant right to recover.

Mead v. Stockpole, 40 Hun 473.

§ 79. **Payment of taxes on part of lot.**— The collector shall receive the tax on part of any lot, piece or parcel of land charged with taxes, provided the person paying such tax shall furnish

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such particular specification of such part, and in case the tax on the remainder thereof shall remain unpaid the collector shall enter such specification on his return to the county treasurer, clearly showing the part on which the tax remains unpaid, and if the part on which the tax shall be so paid shall be an undivided share, the person paying the same shall state to the collector who is the owner of such share, and the collector shall enter the name of such owner on his account of arrears of taxes, and such share shall be excepted in case of a sale for the tax on the remainder.

§ 80. **Payment of taxes on State lands in forest preserve.**—The treasurer of the State, upon the certificate of the comptroller as to the correct amount of such taxes, shall pay the tax levied upon State lands in the forest preserve, by crediting to the treasurer of the county in which such lands may be situated. such taxes, upon the amount payable by such county treasurer to the State for State tax. No fees shall be allowed by the comptroller to the county treasurer for such portion of the State tax as is so paid.

§ 81. **Fees of collector.**—On all taxes paid within thirty days from the date of notice that he has received the roll, the collector shall be entitled to receive, if the aggregate amount shall not exceed two thousand dollars, two per centum, and otherwise one per centum, in addition thereto. On all taxes collected after the expiration of such period of thirty days, the collector shall be entitled to receive five per centum in addition thereto. The collector shall be entitled to receive from the county treasurer two per centum as fees for all taxes returned to the county treasury as unpaid.

See § 109, ante.

Delinquent nonresidents must pay five per cent.

There is no valid reason why an owner of nonresident land should be exempted from the payment of the five per cent. more than any other delinquent. The right to add the five per cent. is also recognized.

[Overing v. Foote, 43 N. Y. 290;] Colman v. Shattuck, 62 N. Y. 348, 363.

§ 82. **Return by collector of unpaid taxes.**—

For Tax Law, § 82. See § 84, ante.

§ 83. **Return when collection has been enjoined.**—

For Tax Law, § 83. See § 85, ante.

Collection of taxes.

§ 84. Payment of money collected.—

For Tax Law, § 84. See § 86, ante.

§ 85. Extension of time for collection.—

For Tax Law, § 85. See § 87, ante.

§ 86. Appointment of collector in case of vacancy.—

For Tax Law, § 86. See § 81, ante.

§ 87. When sheriff shall execute collector's warrant.—

For Tax Law, § 87. See § 80, ante.

§ 88. Satisfaction of collector's bond.—Upon the settlement of the account of taxes directed to be collected by a collector in any town or city, except in the city of New York, the county treasurer shall, if requested, and if the collector shall have fully paid over or duly accounted for all the taxes which he was by law to collect, give to such collector or any of his sureties, a written certificate of such settlement, duly acknowledged, and upon the filing thereof in the office of the clerk of the county where the undertaking is recorded, the clerk shall enter satisfaction of such undertaking which shall thereby be discharged; except that in counties containing cities of the first class such satisfaction when so entered shall only discharge the lien of said bond or undertaking upon the real estate of the collector and his sureties, but the liability of the collector and his sureties upon such bond or undertaking for a failure upon the part of such collector to pay over moneys collected by him shall be in no wise impaired. (*Thus amended by L. 1899, chap. 321, taking effect April 17, 1899.*)

Crisfield v. Murdock, 127 N. Y. 315.

§ 89. Unpaid taxes on resident real property to be reassessed.—

For Tax Law, § 89. See § 60, ante.

§ 90. Payment to creditors of the county.—Each county treasurer shall pay to the creditors of the county from the moneys paid to him by the collectors of taxes of the several towns therein, such sums and in such manner as the board of supervisors of the county direct.

§ 91. Payment of State tax.—

For Tax Law, § 91. See § 89, ante.

Collection of taxes.

§ 92. **Accounts of county treasurer with comptroller.—**

For Tax Law, § 92. See § 90, ante. \

§ 93. **Losses by default of collector or treasurer.—**

For Tax Law, § 93. See § 91, ante.

§ 94. **Receipts for taxes.—**

For Tax Law, § 94. See § 92, ante.

§ 95. **Article, how applicable.—**

For Tax Law, § 95. See § 93, ante.

ARTICLE V.

COLLECTION OF NONRESIDENT TAXES.

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| §100. Return of unpaid nonresident taxes. | §105. Transmittal of statement of cancelled taxes to board of supervisors. |
| §101. Rejection of taxes. | §106. Correction of imperfect descriptions. |
| §102. Admission of nonresident taxes by comptroller and its effect. | §107. Nonresident taxes, when and how paid the comptroller. |
| §103. Payment to the county treasurer of excess of arrears credited. | §108. Reduction of overcharges. |
| §104. Cancellation of tax by comptroller. | §109. Overpaid taxes. |

§ 100. **Return of unpaid nonresident taxes.**—The collector shall return the original assessment-roll to the county treasurer, and when the treasurer finds an account of unpaid taxes on real property or unpaid taxes on corporations, received from a collector to be a true transcript of such original assessment roll to which the collector's warrant is attached, with the descriptions furnished by the supervisor as provided in section eighty-nine, he shall add to it a certificate that he has examined and compared the account with such roll and found it to be correct, and after crediting the collector with the amount thereof, he shall, except in Saint Lawrence, Lewis, Clinton and Oneida counties, in case his county embraces a portion of the forest preserve, before the first day of May next ensuing, transmit such account, affidavit and certificate to the comptroller who may before acting thereon return any such account to the county treasurer for correction, who shall make such correction and return to the comptroller in one month thereafter or as the comptroller may otherwise direct. (*Thus amended by L. 1898, chap. 362, by L. 1902, chap. 171, in effect April 4, 1902, and L. 1906, chap. 189, taking effect April 11, 1906.*)

Thompson v. Burhaus, 61 N. Y. 52.

§ 101. **Rejection of taxes.**—The comptroller shall examine every account of arrears of taxes on lands of nonresidents received from the county treasurer and reject all taxes entered therein, found to be erroneous, or charged on lands imperfectly described, and shall annually on or about Sep-

Collection of nonresident taxes.

tember first, transmit to each county treasurer a transcript of the taxes of the preceding year in any tax district of his county, which shall have been rejected for any cause, with the grounds of such rejection. The comptroller may correct the description of real property in cases where the error is of such nature that the word, words or figures necessary to correct the same are self evident from the context. (*Thus amended by L. 1902, chap. 171, in effect April 4, 1902.*)

§ 102. **Admission of nonresident taxes by comptroller and its effect.**—The comptroller shall admit all such taxes, properly assessed, and credit the county treasurer therewith, and such account, when accepted by him, shall be deemed conclusive evidence of the regularity and validity of all taxes therein so admitted, and all prior proceedings in assessing the lands and levying and collecting such taxes, except when it shall be satisfactorily proven to the comptroller that any such tax was paid in the county, or that there was no legal right to levy the same, or that it arose from a double assessment, the tax levied on one of which has been paid.

Barnard v. Whipple, 117 N. Y. 77.

§ 103. **Payment to the county treasurer of excess of arrears credited.**—If the arrears of taxes on lands of nonresidents credited to the treasurer of any county by the comptroller shall exceed the State tax in such count, the comptroller shall pay such excess, or the whole amount of such arrears, if there be no State tax, after deducting therefrom any balance due from the county, to the county treasurer, and the whole amount of such arrears and taxes shall thereafter belong to the State and be collected for its benefit.

§ 104. **Cancellation of tax by comptroller.**—The comptroller shall cancel any tax credited to a county upon the books in his office, which he shall discover after the transmission of the annual transcript of rejected taxes of such county to the county treasurer, to be erroneous, or charged on lands imperfectly described, and charge such taxes to the county in which such lands shall lie, with the interest thereon from March first, in the year following the levy of the taxes, to February first next after such cancellation. The comptroller shall cancel any tax returned as unpaid if it shall be

Collection of nonresident taxes.

made to appear to him that previously to such return it was paid to the collector or county treasurer, and if it shall also have been paid into the State treasury, he shall cause it to be repaid out of the treasury to the person by whom such payment shall have been made.

§ 105. Transmittal of statement of canceled taxes to board of supervisors.—

For Tax Law, § 105. See § 61, ante.

§ 106. Correction of imperfect descriptions.—

For Tax Law, § 106. See § 61, ante.

§ 107. Nonresident taxes, when and how paid to comptroller.—

The comptroller shall, at any time after August first, next after receiving statement thereof from the county treasurer, furnish any person desiring to pay the taxes on any parcel of land, a certificate of the amount of such taxes, interest and charges, and the State treasurer may receive payment therefor upon such certificate, which shall be countersigned by the comptroller and entered in the books of his office. Such interest shall begin August first, of such year, and be at the rate of ten per centum per annum. Any person claiming a divided or undivided part in any parcel may pay to the State treasurer any part of the amount due thereon, proportionate to the share or interest claimed by him, on the certificate of the comptroller. The remaining tax and charges shall be a lien on the residue of the land or interest only. If the land has been subdivided since the assessment, the comptroller may require a map of the subdivisions. Any person may pay the tax for any one year on any tract or lot of land without paying the tax of any other year.

Van Benthuyzen v. Sawyer, 36 N. Y. 150.

§ 108. Deduction of overcharges.—

For Tax Law, § 108. See § 98, ante.

§ 109. Overpaid taxes.— If it shall satisfactorily appear to the comptroller that the amount of any tax has been paid, and afterwards other money has been paid into the State treasury on account of such tax or that the amount of any tax has been overpaid to the treasurer of the State, he may draw his warrant on the treasury for the amount paid in excess of the tax due, in favor of the person paying the same.

ARTICLE VI.

SALES BY COMPTROLLER FOR UNPAID TAXES AND REDEMPTION OF LANDS.

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| §120. Notice of sale. | §133. Possession of lands by the state. |
| §121. Maps to be furnished comptroller. | §134. Notice to occupants. |
| §122. Sale, how conducted. | §135. Certificate of nonredemption and completion of title. |
| §123. Purchases by comptroller, for state or county. | §136. Redemption by occupant and certificate of redemption. |
| §124. Withdrawal from sale of lands upon which the state has a lien. | §137. Redemption by occupant before notice and effect of failure to redeem. |
| §125. Payment of bids and certificate of purchase. | §138. Lien of mortgage not affected by tax sale. |
| §126. New certificate upon setting aside sale. | §139. Redemption by mortgagee before notice. |
| §127. Redemption of lands. | §140. Cancellation of sales. |
| §128. Redemption of lands conjointly assessed. | §141. Setting aside cancellation of sale. |
| §129. Prohibition of the despoliation of lands sold. | §142. Expenses of sale. |
| §130. Notice of unredeemed lands. | §143. Payment of moneys into state treasury. |
| §131. Comptroller's deed. | |
| §132. Effect of former deeds. | |

§ 120. **Notice of sale.**—The comptroller may sell any lands heretofore or hereafter returned to him for nonpayment of any tax thereon, if such tax and the interest thereon, or any part thereof shall remain unpaid for one year after February first, following the year in which the tax was levied. He shall make out a list of all such lands in any county and transmit to the county treasurer thereof at least eighteen weeks before the commencement of the sale, a number of copies of such list sufficient to furnish five copies to the county treasurer, two copies to the county clerk and two copies to the clerk of each town and city in which such lands are situated. The county treasurer shall transmit the same to such officers. The comptroller shall publish such list with a notice, that on a day specified therein and the succeeding days, so much of such lands as may be necessary to discharge the taxes, interest and charges due thereon at the time of sale, will be sold at public auction at the capitol in the city of Albany. Such list shall be inserted in two newspapers published in such county, once in each week for twelve successive weeks prior to the commencement of the sale, and in the body of the newspapers and not

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in a supplement. If there are not two newspapers published in the county, the publication shall be in two newspapers which the comptroller shall determine to be most generally circulated in the county. Due proof of the publication of such list and notice in each newspaper shall be made and filed in the office of the comptroller, within twenty days after the last publication. The expense of printing, publishing and transmitting such list shall be audited by the comptroller and paid out of the State treasury. No error in the description of the lands in any list published in any newspaper shall render any sale void or in any manner affect its validity.

Wood v. Knapp, 100 N. Y. 109; May v. Traphagin, 139 N. Y. 478.

§ 121. Maps to be furnished comptroller.—

For Tax Law, § 121. See § 100, ante.

§ 122. Sale, how conducted.—On the day mentioned in the notice of sale the comptroller shall commence the sale of the lands specified in the lists annexed to the notice, and continue the sale from day to day, until so much of each parcel shall be sold as will be sufficient to pay all the taxes thereon for the years for the taxes of which such sale shall be made, with the interest and charges thereon. In case no purchaser bids the amount due on any lot or parcel, the comptroller is authorized to bid in such lot or parcel for the State. The comptroller may, in his discretion, decline to receive any bid on any parcel of land, if in his opinion, it is made by or for any person not acting in good faith, and any such land shall be sold at such sale the same as if such bid had not been made thereon. And in case the land is located in a county outside the forest preserve, the comptroller may sell and assign the certificate therefor at any time before the expiration of the period for redemption, on such terms as to him shall seem for the best interests of the State.

§ 123. Purchases by the comptroller for State or county.—

For Tax Law, § 123. See § 101, ante.

§ 124. Withdrawal from sale of lands upon which the State has a lien.—No land against which the people of the State of New York hold a bond or lien for any part of the purchase price thereof shall be sold, but all such land shall be withdrawn from such sale. The amount of taxes, interest and expenses for which it may be

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liable to sale as shown by the comptroller's book of sales shall be charged against each lot, piece or parcel of such land in the books in the comptroller's office in which the accounts of school funds and other bonded lands are kept, and the State treasurer shall, on the receipt of a statement of such amounts, charge the same against the respective lots, pieces or parcels of land, on which they are due, on the duplicate bond-books kept in his office. The holder of the certificate or contract of purchase of any such land, may discharge the same from liability in consequence of such charge, by paying to the State treasurer at any time within two years after the last day of sale from which such lands were withdrawn, the amount of such charges with interest thereon at the rate of ten per centum annually. If such payment is not made, the comptroller shall, at the expiration of such two years, state an account of the indebtedness against each lot, piece or parcel of such land, with the addition of thirty-seven and one-half per centum thereto, and the amount of principal and interest due on the bond or lien thereon, to the commissioners of the land office, who may thereupon, if default shall be made in the payment of such bond, direct the comptroller to put the same in suit, or shall direct the State engineer and surveyor to again sell the lands against which such indebtedness remains. Upon any sale thereof, all previous payments made on account of such land shall be forfeited to the people of the State. No conveyance of any such lands shall be made to any purchaser, until all such taxes and expenses charged against the same on such bond-book are paid into the State treasury.

§ 125. **Payment of bids and certificate of purchase.**—Every purchase at any sale of lands by the comptroller under this article shall pay the amount of his bid to the State treasurer within forty-eight hours after the last day of sale. Upon the payment of a bid to the comptroller he shall give to the purchaser a written certificate, describing the lands purchased, the sum paid and the time when the purchaser will be entitled to a deed.

§ 126. **New certificate upon setting aside sale.**—If a purchaser shall not have paid his bid, or the same shall not have been collected from him at the expiration of one month from the conclusion of the sale, at which the bid was made, the comptroller may set aside the sale of land for which the bid was

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made, and all the rights of the purchaser under such bid shall thereby be extinguished, and the comptroller shall issue a certificate of such sale if the land be in a county including a portion of the forest preserve, to the people of the State. If said land be in a county not including any portion of the forest preserve, such certificate shall be issued to any person who will pay the same amount as would be payable by the original purchaser in case the sale had not been set aside. If such certificate shall not have been sold within three months from the date of such sale he shall transfer the same to the people of the State. If the transfer be to the people, the whole quantity of land liable to sale for the purchase-money mentioned in the certificate shall be covered by such purchase, the same as if no person had offered to bid therefor at the sale. The change of purchaser made pursuant to this section and the time when made shall be noted in the sales book, and the certificate issued shall confer the same right upon the State as it would have acquired had the land been bid in for it at the sale.

§ 127. **Redemption of lands.**— The owner or occupant of any lands sold by the comptroller for taxes, or any other person having an interest therein at the time of the sale, may redeem the same from such sale at any time within one year after the last day of the sale, by paying to the State traesurer, on the certificate of the comptroller for the use of the purchaser, his heirs or assigns, the sum mentioned in the certificate of sale therefor, with interest thereon at the rate of ten per centum per annum, after the date of such certificate of sale. The purchaser of any wild, vacant or unoccupied land at any such sale, or his assigns, shall not enter upon or exercise acts of ownership on such land, until the expiration of one year allowed for the redemption thereof from such sale. A person having an interest in an undivided part of any tract, lot or piece of land so sold, or in an undivided share in any tract or lot of land out of which an undivided part shall have been sold, may redeem such undivided part or share by paying such proportion of the purchase-money and interest as shall be in proportion to the part or share of the lands sold which he shall claim. Every person having an interest in a specific part of any tract, lot or piece of land, so sold, or lot of land out of which an undivided part may have been sold for taxes charged on the whole tract or lot, may

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redeem such specific part by paying such proportion of the purchase money and interest as his quantity of acres shall bear to the whole quantity of acres sold, or to the whole quantity taxed. Any person claiming a specific part of any tract or lot of land, out of which a specific part belonging to some other person shall have been sold for taxes charged on the whole tract or lot, may exonerate himself from all liability to contribute to the owner of the part sold, by paying to the comptroller at any time before the expiration of the time allowed for the redemption thereof, such proportion of the purchase-money and interest as his quantity of acres shall bear to the whole quantity taxed, and such payment shall operate as a redemption of his proportionate part of the lands sold according to the amount paid. Upon a partial redemption under this section, the quantity sold shall be reduced in proportion to the amount paid on such partial redemption and the comptroller shall convey accordingly.

§ 128. **Redemption of lands conjointly assessed.**— If the lands of one person shall be sold for taxes assessed conjointly on his lands and lands of another, and the latter shall not pay his due proportion required for the redemption of his lands, the former may redeem the same on paying to the comptroller the purchase-money and interest, and he shall be entitled to recover, after the expiration of the time allowed for redemption, from the other person whose lands were assessed with his, a just proportion of the redemption moneys paid, with interest. If the lands of one person so sold for taxes assessed conjointly on his lands and the lands of another person, shall not be redeemed, and they shall be conveyed by the comptroller, the former may recover from the latter the same proportion of the value of the lands sold and conveyed, that the latter ought to have paid of the tax and interest and charges for which the lands shall have been sold. Every judgment obtained under this section shall have priority as against the lands of the defendant therein, on which the tax was assessed, and for which such proportionate part ought to have been paid, over all mortgages and judgments, if at the time of docketing such judgment the plaintiff cause an entry to be made by the clerk in the docket thereof, specifying that such judgment has priority as a lien on certain lands, over mortgages and other judgments, pursuant to the tax law, which entry shall be a part of such docket. In all actions under this section, the certificate

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of the State treasurer, countersigned by the comptroller, stating the facts in relation to such redemption, or sale and conveyance, shall be presumptive evidence of all facts therein stated.

§ 129. **Prohibition of the despoliation of lands sold.**— Neither the owner, occupant nor any other person shall have the right to despoil any lands sold for taxes by the comptroller of their value, by the removal of buildings or by cutting, removing or destroying timber, or other valuable products, growing, existing or being thereon at the time of sale. The purchaser of any wild, vacant, or unoccupied land at the sale thereof by the comptroller, whose bid therefor shall have been fully paid, or his assigns or representatives may at any time before obtaining his deed, cause to be served a notice on any person despoiling such lands or interested in such despoliation, either personally or by leaving the same at the residence of such person, or with any member of his family of suitable age and discretion. The notice shall describe such lands, substantially as sold, shall state that it was sold for taxes by the comptroller, and that an action to recover the value of the buildings, timber or other products destroyed or removed therefrom, after the date of sale thereof, will be instituted against all persons concerned in such despoliation. If such lands shall not be redeemed, every person engaged or interested in making such despoliation, upon whom service of the notice shall have been made, shall be liable to pay to the holder of the tax sale certificate therefor the full value of any building so destroyed or removed therefrom, and of all the timber, bark, or other products so cut or destroyed or removed therefrom, from the date of the sale of such land to the termination of such action, and may be restrained by injunction from committing any waste thereon.

§ 130. **Notice of unredeemed lands.**—

For Tax Law, § 130. See § 103, ante.

§ 131. **Comptroller's deed and application therefor.**—

For Tax Law, § 131. See § 102, ante.

§ 132. **Effect of former deeds.**— Every such conveyance heretofore executed by the comptroller, county treasurer or county judge and all conveyances of the same lands by his grantee or grantees therein named, which have for two years been recorded in the office of the clerk of the county in which the lands con-

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veyed thereby are located, and all outstanding certificates of a tax sale heretofore held by the comptroller, that shall have remained in force for two years after the last day allowed by law for redemption from such sale, shall be conclusive evidence that the sale and proceedings prior thereto, from and including the assessment of the lands, and all notices required by law to be given previous to the expiration of the time allowed for redemption, were regular and were regularly given, published and served according to the provisions of all laws directing and requiring the same or in any manner relating thereto, but all such conveyances and certificates, and the taxes and tax sales on which they are based, shall be subject to cancellation, by reason of the payment of such taxes, or by reason of the levying of such taxes by a town or ward having no legal right to assess the land on which they are laid, or by reason of any defect in the proceedings affecting the jurisdiction upon constitutional grounds, on direct application to the comptroller, or in an action brought before a competent court therefor; provided, however that such application shall be made or such action brought in the case of all sales held prior to the year eighteen hundred and ninety-five, within one year from the passage of this act; and in the case of the sale of eighteen hundred and ninety-five and of all sales hereafter held, that such application shall be made, or such action brought, within five years from the expiration of the period allowed by law for the redemption of lands sold at the particular sale sought to be canceled.

§ 133. **Possession of lands by the State.**— The comptroller may advertise once a week for at least three weeks successively, a list of the wild, vacant and forest lands to which the State holds title, from a tax sale or otherwise, in one or more newspapers to be selected by him, published in the county in which the lands are situated, and from and after the expiration of such time, all such wild, vacant and forest lands are hereby declared to be and shall be deemed to be in the actual possession of the comptroller, and such possession shall be deemed to continue until he has been dispossessed by the judgment of a court of competent jurisdiction.

§ 134. **Notice to occupants.**— If any lot or separate tract of land sold for taxes by the comptroller and conveyed, or any part

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thereof shall, at the time of the expiration of one year given for the redemption thereof, be in the actual occupancy of any person, the grantee to whom the same shall have been conveyed, or the person claiming under him, shall within one year from the expiration of the time to redeem, serve a written notice on the person occupying such land, either personally or by leaving the same at the dwellinghouse of the occupant, with a person of suitable age and discretion belonging to his family. If the occupant does not reside in the tax district in which the real estate is situated the notice may be served by mail in the manner required by law in respect to notices of non-acceptance or non-payment of notes or bills of exchange. Service on one joint tenant or tenant in common shall be service on all the joint tenants or tenants in common. Service on a tenant shall be service on his landlord. The term "occupant" shall be construed to mean a person who has lawfully entered upon the land so occupied, and is in possession of the same to the exclusion of every other person. And the term "occupancy" shall mean the actual lawful and exclusive use and possession of such lands and premises by such an occupant. The notice shall state in substance, the sale and conveyance of the land, the person to whom made, the amount of consideration money mentioned in the conveyance, with the addition of thirty-seven and one-half per centum thereon, and of the sum paid for the deed, and that unless such consideration money and percentage with the sum paid for the deed, shall be paid into the State treasury for the benefit of the grantee, within six months after the time of filing in the comptroller's office of the evidence of the service of such notice, the conveyance shall become absolute and the occupant and all others interested in the land be forever barred from all right or title thereto. No conveyance made in pursuance of this section shall be recorded until the expiration of the time mentioned in such notice, and the evidence of the service of such notice shall be recorded with such conveyance.

Am'd by ch. 171 of 1902.

Notice which names four different days for redemption of various lots without specifying the last day for any particular parcel is defective.

Clason v. Baldwin, 152 N. Y. 204.

§ 135. **Certificate of nonredemption and completion of title.**— Within one month after the service of any such notice, the grantee or person claiming under him, in order to complete his

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title to the land conveyed shall file with the comptroller a copy of the notice served, with the affidavit of a person, certified as credible by the officer before whom the affidavit is taken, that the notice was duly served specifying the mode of service. If the comptroller shall be satisfied that the proper notice has been duly served, and if the moneys required for the redemption of such land shall not have been paid within the six months, he shall under his hand and official seal, certify such facts, and the conveyance before made shall thereupon become absolute and the occupant and all others interested in such lands shall be forever barred from all right and title thereto.

§ 136. **Redemption by occupant and certificate of redemption.**—The occupant, or any other person having an interest therein at the time of the sale, may at any time within the six months mentioned in such notice redeem such land by paying into the treasury the consideration money with the addition of thirty-seven and one-half per centum thereon and the amount paid for the deed. Every such redemption shall be as effectual as if made before the expiration of the year allowed for the redemption of the land sold. In all cases of application for redemptions on the ground of occupancy, in which a part only of the separate lot or tract of land thus sold is occupied, the applicant shall be allowed to redeem only that particular part of the lot or tract sold which shall be actually occupied, used and possessed as herein defined, at the time of the expiration of the one year given for the redemption thereof; provided, that the notice required to be served upon such occupant by the purchaser at a tax sale, his grantee or person claiming under him, shall, in addition to other facts now required to be stated therein, contain a specific description of the particular part of the lot or tract sold which may be redeemed and the amount necessary to redeem the same. Such partial redemption may be allowed upon filing in the office of the comptroller, satisfactory evidence of such occupancy, and of the extent thereof, and by paying such proportion of the consideration money mentioned in the conveyance, with the addition of thirty-seven and one-half per centum of such amount and the further addition of the sum paid for the deeds, as the value of the lands and the premises occupied and sought to be redeemed bears to the value of the whole quan-

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tity of land sold; such value to be determined and fixed by the comptroller.

§ 137. **Redemption by occupant before notice and effect of failure to redeem.**—The occupant of any lot or separate tract of land sold for taxes by the comptroller, or any part thereof, or any person who had the title thereto or an interest therein at time of the sale may, at any time before the service of such notice by the purchaser or the person claiming under him and within two years from the expiration of the year allowed by law for the redemption thereof and not thereafter, redeem any land so occupied, by filing in the office of the comptroller, satisfactory evidence of the occupancy required, and by paying to him the consideration money for which the lands to be redeemed were sold and thirty-seven and one-half per centum thereon, with the sum paid for the deed, if any. On application for such redemption the comptroller may appoint a commissioner to take all material evidence offered with reference to the occupation of the lands in question. The hearing shall be had in the county where the land is situated, on at least ten days' notice to the party applying for the redemption. The commissioner shall have the same power to issue subpoenas and proceed with the examination of witnesses under oath, as is had by a referee in a court of record. His compensation shall not exceed six dollars per day and shall be taxed by the comptroller and paid upon his warrant by the treasurer. He shall report the testimony taken by him with his opinion thereon, to the comptroller for his decision. Such occupant or other person shall also pay to the comptroller such amounts as may have been paid to the State for subsequent taxes thereon, or for redemption from subsequent tax sales thereof, and if such lot has been legally exempt from taxation for one or more years subsequent to the sale, a sum equal to the gross amount of taxes and interest which would have been due thereon, if it had been taxed during each of the years it was so exempt, on its assessed valuation, and at the rate per centum of taxation thereon for the year when last returned to the comptroller's office. In case of failure to redeem within the time herein specified, the sale and conveyance thereof shall become absolute and the occupant and all other persons barred forever.

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138. **Lien of mortgage not affected by tax sale.**— The lien of a mortgage, duly recorded or registered at the time of the sale of any lands for nonpayment of any tax or assessment thereon, shall not be destroyed, or in any manner affected, except as provided in this section. The purchaser at any such sale shall give to the mortgagee a written notice of such sale within one year from the expiration of the time to redeem, and in case of tax sales heretofore held, where the time of redemption by mortgagees has not expired, within three years from the passage of this act, requiring him to pay the amount of purchase-money, with interest at the rate allowed by law in case of redemption by occupants, within six months after giving the notice. Such notice may be given either personally or in the manner required by law in respect to notices of nonacceptance or nonpayment of notes or bills of exchange, and a notarial certificate thereof shall be presumptive evidence of the fact that may be recorded in the county in which the mortgage was recorded, in the same manner and with the same effect as a deed or other evidence of title to real property.

Am'd by ch. 373 of 1897.

§ 139. **Redemption by mortgagee before notice.**— The holder of any mortgage which is duly recorded at the time of the sale, may, at any time after the sale of all or any part of the mortgaged premises for unpaid taxes, and before the expiration of six months from the giving of the notice required by this article to be given to a mortgagee, redeem the premises so sold or any part thereof from such sale. The redemption shall be made by filing with the comptroller a written description of his mortgage and by paying to the State treasurer, upon the certificate of the comptroller, for the use of the purchaser, his heirs or assigns, the sum mentioned in his certificate, with interest at the rate allowed by law in case of redemption by occupants from the date of such certificate. The holder of such mortgage shall have a lien upon the premises redeemed for the amount so paid with interest from the time of payment, in like manner as if it had been included in the mortgage. Provided, however, that the notice required to be given under this and the last preceding section shall be directed only to such persons as shall within two years from the time of such sale, and in case of all sales held before April twenty-fourth, eighteen hundred and ninety-seven, the date of the taking effect

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of chapter three hundred and seventy-three of the laws of eighteen hundred and ninety-seven, where the time allowed by law for redemption by mortgagees had not then expired within two years from April twenty-fourth, eighteen hundred and ninety-seven. file in the office of the comptroller a notice, stating the names of mortgagor and mortgagee, the date of the mortgage, and the amount claimed to be due thereon, and the county, town and tract in which the mortgaged premises are situated, with the number of the lot on which said mortgage is claimed to be a lien, with the name of the person or persons claiming notice, their residence and the post-office, to which such notice shall be addressed. A purchaser of mortgaged premises at a sale thereof under and in pursuance of a judgment or decree of foreclosure of a mortgage thereof, held within two years after April twenty-fourth, eighteen hundred and ninety-seven, shall be deemed in all actions and proceedings relating to the redemption of said premises from any previous tax sales thereof, to have been the holder of said mortgage and to have been entitled to take the like proceedings for the redemption of said premises from such tax sales and with the like effect, as the holder of such mortgage would have been entitled to if there had been no foreclosure of such mortgage. (*Thus amended by L. 1897, chap. 373, and L. 1901, chap. 605, taking effect April 27, 1901.*)

§ 140. **Cancellation of sales.—**

For Tax Law, § 140. See § 104, ante.

§ 141. **Setting aside cancellation of sale.—** The comptroller is hereby authorized and empowered and shall, upon the application of any one whomsoever aggrieved thereby, set aside any cancellation of sale made by him, or by any of his predecessors in office, in either of the following cases:

First. When such cancellation was procured by fraud or misrepresentation.

Second. When it was procured by the suppression of any material fact bearing on the case.

Third. When it was made under a mistake of fact.

Fourth. When such cancellation was made upon an application which the comptroller, or any of his predecessors in office, had no jurisdiction or legal right to entertain at the time of such cancellation.

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Eight days written notice of an application made under and pursuant to this section shall be served upon the person upon whose application such sale was canceled, or his heirs or grantees, the county treasurer of the county or counties in which the lands affected by such application are situate and upon the attorney-general of the State of New York; in case any of the parties to be served are not residents of the State of New York, or can not after reasonable diligence be found within the State of New York, such notice may be served by the publication thereof in a newspaper published in the county or counties where the lands affected by such application are situate, and also in the newspaper printed at Albany, in which legal notices are required to be published, once in each week for three weeks immediately preceding the day upon which such application is to be made, and also by mailing a copy of said notice to each of said parties at their last known place of residence; and on or before the day of the first publication all papers upon which such application is to be made shall be filed in the office of the comptroller. The comptroller shall in all cases specify the grounds upon which such cancellation is set aside, and every such cancellation set aside by the comptroller shall in every and all respects have the same force and effect as though no cancellation thereof had ever been made. (*Thus amended by L. 1897, chap. 392.*)

§ 142. **Expenses of sale.**— The expenses attending any sale for taxes under this article, including the expenses of printing and publishing lists and notices and transmitting copies thereof, and of all other things required to be done before the sale shall be had, shall be a charge on the lands liable to be sold; and the comptroller shall add to the taxes, interest and other charges on each parcel of land liable to be sold, an equal proportionate part of such expenses to be estimated by him.

§ 143. **Payment of moneys into State treasury.**— The moneys received upon any sale and interest under this article, and for the expenses of the sale shall be paid into the State treasury and the accounts of all persons entitled to any portion of the moneys so received for such expenses, shall be audited by the comptroller and paid out of the State treasury.

ARTICLE VII.

SALES BY COUNTY TREASURERS FOR UNPAID TAXES AND REDEMPTION OF LANDS.

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| §150. When lands to be sold for unpaid taxes. | §155. When purchase money to be refunded. |
| §151. Advertisement and sale. | §156. Lands which the state owns or upon which it has a lien. |
| §152. Redemption. | §157. Provisions relative to comptroller to apply to treasurer. |
| §152a. Redemption of real property stricken from tax roll. | §158. Article not to relate to certain cities. |
| §153. Conveyance by county treasurer. | §159. Expenses of publishing notice to redeem. |
| §154. Conveyance and its effect. | |

§ 150. When lands to be sold for unpaid taxes.—

For Tax Law, § 150. See § 105, ante.

§ 151. Advertisement and sale.—

For Tax Law, § 151. See § 106, ante.

§ 152. **Redemption.**— The owner, occupant or any other person having an interest in any real estate sold for taxes as aforesaid, may redeem the same at any time within one year after the last day of such sale, by paying to the county treasurer of the county, for the use of the purchaser, the sum mentioned in his certificate, together with interest thereon at the rate of ten per centum per annum, to be computed from the date of such certificate, and any tax which the holder of said certificate shall have paid between the days of sale and redemption, together with the share of the expense of the publication of notices to redeem the real estate sold in such county for unpaid taxes, as apportioned by the county treasurer to the real estate so redeemed, which expense shall be in the first instance a county charge and shall be at the same rate as that provided for the publication of notices of tax sales. In case any parcel of real estate mentioned in such notice to redeem shall not be redeemed within the one year allowed by law for such redemption then and in that event the share of the expense of the publication of notices to redeem such unredeemed real estate sold in any such county for unpaid taxes, as apportioned by the county treasurer, together with interest

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thereon for one year at the rate of ten per centum per annum, shall be laid before the board of supervisors of such county for reassessment as are other taxes and shall be by such board of supervisors reassessed upon the assessment roll of the current year against such real estate and shall be a lien thereon. (*Thus amended by L. 1904, chap. 535.*)

§ 152a. **Redemption of real property stricken from tax rolls.**—The real property struck down to a county at said tax sale and omitted from the tax rolls as provided in section fifty of this act shall not be subject to further sale after having been once so sold for taxes. The real property so omitted from the tax rolls may be redeemed by the owner, occupant or any person having an interest in the same, provided the county has not acquired a title in fee to such real property, upon the payment to the county treasurer for the use and benefit of the county of a sum equal to the gross amount of the taxes, expenses of such sale, penalty and interest thereon, together with the tax and interest thereon which would have been due on said real property had it been taxed during each of the years it was so omitted from the tax rolls. The said taxes for each of the years during which said real estate is so omitted from the tax rolls shall be computed on the basis of the assessed valuations returned on said real property by the assessors of the several tax districts and at the rate fixed by the board of supervisors as the tax rate for the tax district within which said real estate is situated. (*Section inserted by L. 1905, chap. 447.*)

§ 153. **Conveyance by county treasurer.**—

For Tax Law, § 153. See § 107, ante.

§ 154. **Conveyance and its effect.**—A purchaser or his legal representative may, upon receiving a conveyance under and by virtue thereof, possess and enjoy for his own use the real estate described in such conveyance, unless redeemed as herein provided, and after the expiration of the time to redeem the same, may cause the occupant of such real estate to be removed therefrom, and the possession to be delivered to him in the same manner and by the same proceedings, and before the same officers as in the case of a tenant holding over after the expiration of his term without permission of his landlord.

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§ 155. When purchase money to be refunded.—

For Tax Law, § 155. See § 108, ante.

§ 156. Lands which the State owns or upon which it has a lien.

— The county treasurer of any county not embracing a portion of the forest preserve shall, at least two months prior to any tax sale to be held by him, transmit to the comptroller an accurate and complete list of all the lands in such county to be sold thereat. The State comptroller shall, at least two weeks prior to any such tax sale, transmit to such county treasurer a list of all lands advertised to be sold at such tax sale, belonging to the State, or shall then be mortgaged to the commissioners for loaning certain moneys of the United States, or against which the State holds a bond or lien, for any part of the purchase money thereof, or for which the State may then hold a tax sale certificate. The county treasurer conducting such sale shall bid in for the State all lands described in the list transmitted to him by the comptroller, and shall, at the close of such sale, transmit to the comptroller a verified and itemized statement showing the amount of each bid made in the name of the State thereat, and the State comptroller shall, within ten days after the receipt by him of such statement, draw his warrant on the State treasurer for the amount thereof or credit the county with the amount of such statement on the books of his office.

§ 157. Provisions relative to comptroller to apply to treasurer.

— The provisions of article six of this act, entitled “sales by comptroller for unpaid taxes and redemption of lands,” shall, in so far as it is not otherwise herein provided, govern and control the action of the county treasurer, who shall perform the duties therein devolved upon the comptroller and the same rights and remedies shall be deemed to exist under the provisions of this article as are provided for in said article six.

§ 158. Article not to relate to certain cities.— This or the preceding article shall not affect any law relating to the sale of real estate for taxes in any city.

§ 159. Expense of publishing notice to redeem.— Where a tax sale has been held by a county treasurer pursuant to this article, the expense of publishing the notice to redeem as required by

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section one hundred and thirty of this chapter shall be apportioned as equitable as may be between the several pieces or parcels included therein. The amount so apportioned to any parcel shall be paid to the county treasurer by the purchaser at the tax sale upon the execution of a conveyance to him. If a parcel of land is redeemed subsequent to the publication of the notice, the person redeeming shall pay to the county treasurer, in addition to the amount required by section one hundred and fifty-two, the expense of publishing the notice to redeem the same. If a parcel of land is bid in by the county and is not redeemed, the expense of publishing the notice to redeem shall be a county charge. The money received by a county treasurer for the expense of publishing the redemption notices shall be applied by him to pay the publishers therefor. (*Added by L. 1905, chap. 278.*)

ARTICLE VIII.

STATE BOARD OF TAX COMMISSIONERS; STATE BOARD OF EQUALIZATION.

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| §170. State board of tax commissioners. | §174. Appeals to the state board of tax commissioners from equalization of board of supervisors. |
| §171. Powers and duties of state board of tax commissioners. | §175. Appeals, how conducted. |
| §172. Tax commissioners to visit counties. | §176. Determination of appeals. |
| §173. State board of equalization; powers and duties. | §177. Costs on appeal. |

§ 170. **State board of tax commissioners.**—The tax commissioners now in office shall continue in office for the terms for which they were appointed, and they and their successors shall constitute the State board of tax commissioners. On the expiration of their terms the governor shall appoint three commissioners by and with the advice and consent of the senate, to hold office for three years, and so classified that the term of office of one of them shall expire with the thirty-first day of December in each year, and in case of a vacancy the appointment shall be for the unexpired term. Each commissioner shall receive an annual compensation of five thousand dollars, payable monthly, and in addition thereto the expenses actually incurred by him, in the discharge of his official duties, including expenses while attending meetings of the commission.

Am'd by ch. 94 of 1900. In effect March 8, 1900.

§ 171. **Powers and duties of State board of tax commissioners.**—The State board of tax commissioners shall:

First. Investigate and examine, from time to time, as to the methods of assessment within the State.

Second. Furnish local assessors with such information as may be necessary or proper to aid them in making the assessment thereof.

Third. Make such rules and regulations as may be necessary to enforce the provisions of this article and prepare forms for reports and assessment-rolls, and furnish the same to assessors and other officers at the expense of the State.

State board of tax commissioners; state board of equalization.

Fourth. Take testimony and hear proofs, under oath, with reference to any matter within the line of its official duty. Any member of such board may be designated for that purpose. And it may require from all State and municipal officers such information as may be necessary for the proper discharge of its duties.

Fifth. Hold meetings at an office to be assigned it in one of the State buildings at Albany, at such times as may be fixed by the chairman of the board or by adjournment thereof, or at such other places as it may designate.

Sixth. Employ a secretary, prescribe his duties and fix his salary at a sum not to exceed thirty-five hundred dollars per annum; employ not to exceed six special agents who shall be deemed the confidential agents of the board; and experts and other needed assistants and prescribe their duties. It shall fix the compensation of such employees, which shall not exceed in the aggregate the amount annually appropriated by the legislature for that purpose.

Am'd by chap. 94 of 1900. In effect March 8, 1900.

Seventh. Prepare an annual report to the legislature and recommend such changes or amendments to the tax laws as it may deem advisable.

Eighth. Perform the other powers and duties conferred upon it by law.

§ 172. **Tax commissioners to visit counties.**—Two or more of the members of the board of tax commissioners shall officially visit every county in the State at least once in two years, and inquire into the methods of assessment and taxation, and ascertain whether the assessors faithfully discharge their duties and particularly as to their compliance with this act requiring the assessment of all property not exempt from taxation at its full value.

§ 173. **State board of equalization; powers and duties.**—The commissioners of the land office and the three commissioners of taxes shall constitute the State board of equalization. The State board of equalization shall meet in the city of Albany on the first Tuesday in September in each year, for the purpose of examining and revising the valuations of real and personal property of the several counties as returned to the board of tax commissioners, and shall fix the aggregate amount of assessment for each county,

State board of tax commissioners; state board of equalization.

upon which the comptroller shall compute the State tax. Such board may increase or diminish the aggregate valuations of real property in any county by adding or deducting such sum as in its opinion may be just and necessary to produce a just relation between the valuations of real property in the State. But it shall in no instance, reduce the aggregate valuations of all the counties below the aggregate valuations thereof as so returned. The comptroller shall immediately ascertain from this assessment, a copy of which shall be transmitted to him, the proportion of State tax each county shall pay, and mail a statement of the amount to the county clerk, and to the chairman and clerk of the board of supervisors of each county.

§ 174. **Appeals to the State board of tax commissioners from equalization by board of supervisors.—**

For Tax Law, § 174. See § 66, ante.

§ 175. **Appeals, how conducted.—**

For Tax Law, § 175. See § 67, ante.

§ 176. **Determination of appeals.—**

For Tax Law, § 176. See § 68, ante.

§ 177. **Costs on appeal.—**

For Tax Law, § 177. See § 69, ante.

ARTICLE IX.

CORPORATION TAX.

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| §180. Organization tax. | §191. Further requirements as to reports of corporations. |
| §181. License tax on foreign corporations. | §192. Powers of comptroller to examine into affairs of corporations. |
| §182. Franchise tax on corporations. | §193. Notice of statement of tax; interest. |
| §183. Certain corporations exempted from tax on capital stock. | §194. Payment of tax and penalty for failure. |
| §184. Additional franchise tax on transportation and transmission corporations and associations. | §195. Revision and readjustment of accounts by comptroller. |
| §185. Franchise tax on elevated railroads or surface railroads not operated by steam. | §196. Review of determination of comptroller by certiorari. |
| §186. Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies. | §197. Regulations as to such writ of certiorari. |
| §187. Franchise tax on insurance corporations. | §198. Warrant for the collection of taxes. |
| §187a. Franchise tax on trust companies. | §199. Information of delinquents. |
| §187b. Franchise tax on savings banks. | §200. Action for recovery of taxes; forfeiture of charter of delinquent corporations. |
| §188. Tax upon foreign bankers. | §201. Reports to be made by the secretary of state. |
| §189. Reports of corporations. | §202. Exemptions from other state taxation. |
| §190. Value of stock to be appraised. | §203. Application of taxes. |

§ 180. **Organization tax.**—Every stock corporation incorporated under any law of this State shall pay to the State treasurer a tax of one-twentieth of one per centum upon the amount of capital stock which the corporation is authorized to have, and a like tax upon any subsequent increase. Provided, that in no case shall such tax be less than one dollar. Such tax shall be due and payable upon the incorporation of such corporation or upon the increase of its capital stock. Except in the case of a railroad corporation neither the secretary of state nor county clerk shall file any certificate of incorporation or article of association, or give any certificate to any such corporation or association until he is furnished a receipt for such tax from the State treasurer, and no stock corporation shall have or exercise any corporate franchise or powers, or carry on business in this State until such tax shall have been paid. And in case of a decrease of capital stock, upon

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which the tax required by law has been paid, and a subsequent increase thereof, a tax shall be paid only upon so much of such increase as exceeds the amount of capital stock upon which a tax has been before paid. In case of the consolidation of existing corporations into a corporation, such new corporation shall be required to pay the tax hereinbefore provided for only upon the amount of its capital stock in excess of the aggregate amount of capital stock of said corporations. This section shall not apply to State and national banks or to building, mutual loan, accumulating fund and co-operative associations. A railroad corporation need not pay such tax at the time of filing its certificate of incorporation, but shall pay the same before the railroad commissioners shall grant a certificate, as required by the railroad law, authorizing the construction of the road as proposed in its articles of association, and such certificate shall not be granted by the board of railroad commissioners until it is furnished with a receipt for such tax from the State treasurer. (*Thus amended by L. 1901, chap. 448, taking effect April 22, 1901, and L. 1906, chap. 524, taking effect May 21, 1906.*)

§ 181. **License tax on foreign corporations.**—Every foreign corporation, except banking corporations, fire, marine, casualty and life insurance companies, co-operative fraternal insurance companies and building and loan associations, authorized to do business under the general corporation law, shall pay to the State treasurer, for the use of the State, a license fee of one-eighth of one per centum for the privilege of exercising its corporate franchises or carrying on its business in such corporate or organized capacity in this State, to be computed upon the basis of the capital stock employed by it within this State during the first year of carrying on its business in this State; and if any year thereafter any such corporation shall employ an increased amount of its capital stock within this State, the same license fee shall be due and payable upon any such increase. The tax imposed by this section on a corporation not heretofore subject to its provisions shall be paid on the first day of December, nineteen hundred and one, to be computed upon the basis of the amount of capital stock employed by it within the State during the year preceding such date, unless on such date such corporation shall not have employed capital within the State for a period of thirteen months, in which case it shall be paid within the time otherwise provided by this section.

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No action shall be maintained or recovery had in any of the courts in this State by such foreign corporation without obtaining a receipt for the license fee hereby imposed within thirteen months after beginning such business within the State, or if at the time this section takes effect such a corporation has been engaged in business within this State for more than twelve months, without obtaining such receipt within thirty days after such tax is due.

Am'd by ch. 558 of 1901. In effect April 26, 1901.

§ 182. Franchise tax on corporations.—

For Tax Law, § 182. See § 122, ante.

§ 183. Certain corporations exempt from tax on capital stock.—

For Tax Law, § 183. See § 123, ante.

§ 184. Additional franchise tax on transportation and transmission corporations and associations.—

For Tax Law, § 184. See § 124, ante.

§ 185. Franchise tax on elevated railroads or surface railroads not operated by steam.—

For Tax Law, § 185. See § 125, ante.

§ 186. Franchise tax on water-works companies, gas companies, electric or steam heating, lighting and power companies.—

For Tax Law, § 186. See § 126, ante.

§ 187. Franchise tax on insurance corporations.—

For Tax Law, § 187. See § 127, ante.

§ 187a. Franchise tax on trust companies.—

For Tax Law, § 187a. See § 128, ante.

§ 187b. Franchise tax on savings banks.—

For Tax Law, § 187b. See § 129, ante.

§ 188. Tax upon foreign bankers.—

For Tax Law, § 188. See § 130, ante.

§ 189. Reports of corporation.—Corporations liable to pay a tax under this article shall report as follows:

1. **Corporations paying franchise tax.—**Every corporation, association or joint-stock company liable to pay a tax under section one hundred and eighty-two of this chapter shall, on or before November fifteenth in each year, make a written report to the comptroller of its condition at the close of its business on October

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thirty-first preceding, stating the amount of its authorized capital stock, the amount of stock paid in, the date and rate per centum of each dividend declared by it during the year ending with such day, the entire amount of the capital of such corporation, and the capital employed by it in this State during such year.

2. **Transportation and transmission corporations.**— Every transportation or transmission corporation, joint-stock company or association liable to pay an additional tax under section one hundred and eighty-four of this chapter, shall also, on or before August first in each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from all sources and the amount of its gross earnings from its transportation or transmission business originating and terminating within this State.

3. **Elevated and surface railroad corporations.**— Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-five of this chapter, shall, on or before August first of each year, make a written report to the comptroller of its condition at the close of its business on June thirtieth preceding, stating the amount of its gross earnings from business done in this State, the amount of dividends of every nature declared or paid during the year ending June thirtieth, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

4. **Water-works, gas, electric, steam heating, lighting and power corporations.**— Every corporation, joint-stock company or association liable to pay a tax under section one hundred and eighty-six of this chapter, shall, on or before December first of each year, make a written report to the comptroller of its condition at the close of its business on October thirty-first preceding, stating the amount of its gross earnings from business done in this State, the amount of dividends of every nature declared or paid during the year ending with October thirty-first, the authorized capital of the company and the amount of capital stock actually issued and outstanding.

5. **Insurance corporations.**— Every insurance corporation liable to pay a tax under section one hundred and eighty-seven of this

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chapter, shall, on or before March first in each year, make a written report to the comptroller of its condition at the close of its business on December thirty-first preceding, stating the entire amount of premiums received on business done thereby in this State during the year ending with such day, whether the premiums were in money or in the form of notes, credits or other substitutes for money.

Am'd by ch. 118 of 1901. In effect March 16, 1901.

6. **Foreign bankers.**— Every foreign banker liable to pay a tax under section one hundred and eighty-eight of this chapter shall, on or before February first in each year, make a written report to the comptroller of the condition of his business on December thirty-first preceding, stating the amount of tax for which he is liable under this article, and giving in detail the facts required by the last preceding section for the purpose of ascertaining and computing the same.

7. **Trust companies.**— Every company liable to pay a tax under section one hundred and eighty-seven-a of this chapter shall, on or before August first in each year, make a written report to the comptroller of its condition at the close of business on June thirtieth preceding, separately stating the amount of its capital stock, the amount of its surplus, and the amount of its undivided profits, and containing such other data, information or matter as the comptroller may require. (*Inserted by L. 1901, chap. 132, and L. 1902, chap. 172, in effect April 6, 1902.*)

8. **Savings banks.**— Every savings bank liable to pay a tax under section one hundred and eighty-seven-b of this chapter, shall on or before August first in each year make a written report to the comptroller of its condition, at the close of business on June thirtieth preceding, stating the par value of its surplus, and undivided earnings and containing such other data, information or matter as the comptroller may require. (*Inserted by L. 1901, chap. 117, taking effect March 16, 1901.*)

§ 190. **Value of stock to be appraised.**— If the dividend or dividends amount to less than six per centum on the par value of the capital stock, and

(1) The assets exceed the liabilities, exclusive of capital stock, by an amount equal to or greater than the par value of the capital stock, or

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(2) The average price at which such stock sold during said year is equal to or greater than the par value of the capital stock, then the president, treasurer or secretary of the company liable to pay a tax under the provisions of section one hundred and eighty-two of this chapter, shall, under oath, between the first and fifteenth days of November in each year, estimate, and appraise the capital stock of such company at a value which value shall not be less, however, than

(1) The average price at which such stock sold during said year,

(2) The difference between the assets and liabilities, exclusive of capital stock,

(3) The par value thereof, and shall forward the same to the comptroller with the report provided for in the last section. If the comptroller is not satisfied with the valuation so made and returned he is authorized and empowered to make a valuation thereof, and settle an account upon the valuation so made by him, and the taxes, penalties and interest to be paid the State. (*Thus amended by L. 1906, chap. 474, taking effect October 31, 1906.*)

§ 191. **Further requirements as to report of corporations.**— Every report required by this article shall have annexed thereto, the affidavit of the president, vice-president, secretary or treasurer of the corporation, association or joint-stock company or of the person or one of the persons, or the members of the partnership making the same, to the effect that the statements contained therein are true. Such reports shall contain any other data, information or matter which the comptroller may require to be included therein, and he may prescribe the form in which such reports shall be made and the form of oath thereto. When so prescribed such form shall be used in making the report. The comptroller may require at any time a further or supplemental report under this article, which shall contain information and data upon such matters as the comptroller may specify.

§ 192. **Powers of comptroller to examine into affairs of corporation.**— In case any report required by any of the preceding sections of this article shall be unsatisfactory to the comptroller, or if any such report is not made as herein required, the comptroller is authorized to make an estimate of the dividends paid

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by such corporation and the value of the capital stock employed by it, from any such report or from any other data, and to order and state an account according to the estimate and value so made by him for the taxes, percentage and interest due the State from such corporation, association, joint-stock company, person or partnership. The comptroller shall also have power to examine or cause to be examined in case of a failure to report or in case the report is unsatisfactory to him, the books and records of any such corporation, joint-stock association, company, foreign banker, person or partnership, and may hear testimony and take proofs material for his information, either personally or he may appoint a commissioner by a written appointment under his hand and official seal for that purpose. Every commissioner so appointed shall be authorized to make such examination and take such testimony and hear such proofs and report the proofs and testimony so taken and the result of his examination so made and the facts found by him to the comptroller. The comptroller shall, therefrom, or from any other data which shall be satisfactory to him, order and state an account for the tax due the State, together with the expenses of such examination and the taking of such testimony and proofs. Such expenses shall be fixed and adjusted by the comptroller.

§ 193. **Notice of statement of tax; interest.**— Upon auditing and stating every account for taxes or other charges under this article, the comptroller shall forthwith send notice thereof in writing to the person, partnership, company, association or corporation against whom the same is made, which notice may be mailed to the post-office address of such person, partnership, association, company or corporation. All accounts so audited and stated bear interest upon the total amount found due thereon to the State, for taxes, percentage, interest and other charges, from the expiration of thirty days after sending such notice until payment thereof shall be made.

§ 194. **Payment of tax and penalty for failure.**— A tax imposed by sections one hundred and eighty-two or one hundred and eighty-six of this chapter, shall be due and payable into the State treasury on or before the fifteenth day of January in each year. A tax imposed by section one hundred and eighty-four of this chapter on a transportation or transmission corporation, or by section

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one hundred and eighty-five, on elevated railroads or surface railroads not operated by steam, shall be due and payable into the State treasury on or before the first day of August in each year. A tax imposed by section one hundred and eighty-seven of this chapter on an insurance corporation, shall be due and payable into the State treasury on or before the first day of June in each year. A tax imposed by section one hundred and eighty-seven-a or one hundred and eighty-seven-b shall be due and payable into the State treasury on or before the first day of September in each year. A tax imposed by section one hundred and eighty-eight of this chapter on a foreign banker shall be due and payable into the State treasury on or before February first in each year. If such tax in any case is not paid within thirty days after the same becomes due, or if the report of any such corporation is not made within the time required by this article, the corporation, association, joint-stock company, person or partnership, liable to pay the tax, shall pay into the State treasury in addition to the amount of such tax, a sum equal to five per centum thereof, and one per centum additional for each month the tax remains unpaid, which sum shall be added to the tax and paid or collected therewith. Every corporation, association, joint-stock company, person, or partnership failing to make the annual report required by this article, or failing to make any special report required by the comptroller, within any reasonable time to be specified by him, shall forfeit to the people of the State the sum of one hundred dollars for every such failure, and the additional sum of ten dollars for each day that such failure continues. Such tax shall be a lien upon and bind all the real and personal property of the corporation, joint-stock company or association liable to pay the same from the time when it is payable until the same is paid in full.

Am'd by chs. 118 and 132 of 1901.

Am'd by ch. 558 of 1901. In effect April 26, 1901.

§ 195. **Revision and readjustment of accounts by comptroller.**—The comptroller may, at any time within one year from the time any such account shall have been audited and stated, and notice thereof sent to the person, partnership, company, association or corporation against whom it is stated, revise and readjust such account upon application therefor by the party against whom the account is stated or by the attorney-general, and if it shall be made to appear upon any such application by evidence submitted

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to him or otherwise, that any such account included taxes or other charges which could not have been lawfully demanded, or that payment has been legally made or exacted of any such account, he shall resettle the same according to law and the facts and charge or credit, as the case may require, the difference, if any, resulting from such revision or resettlement upon the accounts for taxes of or against any such person, partnership, company, association or corporation. Such credit, whether allowed before or after the passage of this act, may be, by the person, partnership, company, association or corporation in whose favor it is allowed, assigned to a person, partnership, company, association or corporation liable to pay taxes under article nine of this act and the assignee of the whole or any part of such credit on filing with the comptroller such assignment shall thereupon be entitled to credit on the books of the comptroller for the amount thereof on the current account for taxes of such assignee in the same way and with the same effect as though the credit had originally been allowed in favor of such assignee. The comptroller shall forthwith send written notice of his determination upon such application to the applicant, and to the attorney-general, which notice may be sent by mail to his post-office address. (*Thus amended by L. 1903, chap. 642, taking effect May 22, 1903.*)

§ 196. **Review of determination of comptroller by certiorari.**—The determination of the comptroller upon any application made to him by any person, partnership, company, association or corporation for a revision and resettlement of any account, as prescribed in this article, may be reviewed both upon the law and the facts, upon certiorari by the Supreme Court at the instance of any person, partnership, company, association or corporation affected thereby, and in the name and on behalf of the people of the State. For the purpose of such review the comptroller shall return, on such certiorari, the accounts and all the evidence before him on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts shall be found erroneous or illegal, either in point of law or of fact, by the Supreme Court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of the Supreme Court upon any such review, an appeal to the court of appeals may be taken by either party.

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§ 197. **Regulations as to such writ of certiorari.**—No certiorari to review any audit and statement of an account or any determination by the comptroller under this article, shall be granted unless notice of application therefor is made within thirty days after the service of the notice of such determination. Eight days' notice shall be given to the comptroller of the application for such writ. The full amount of the taxes, percentage, interest and other charges, audited and stated in such account must be deposited with the State treasurer before making the application and an undertaking filed with the comptroller in such amount and with such sureties as a justice of the Supreme Court shall approve to the effect that if such writ is dismissed or the determination of the comptroller affirmed, the applicant for the writ will pay all costs and charges which may accrue against him, or it in the prosecution of the writ, including costs of all appeals.

The notice to be served on the present comptroller.

The acting comptroller, being the custodian of the records of his predecessor, can, without any aid from his predecessor, answer the writ from the records of his office, and we can see no reason under such circumstances for making such predecessor a party to the writ.

Matter of Tiffany, 80 Hun, 486, 488.

§ 198. **Warrant for the collection of taxes.**—After the expiration of thirty days from the sending by the comptroller of a notice of a settlement of an account as provided in this article, unless the amount of such account shall have been paid or deposited with the State treasurer, if an appeal or other proceedings have been taken to review the same, and the undertaking given as provided in this article, the comptroller may issue a warrant under his hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the person, partnership, company, association or corporation against which such account is stated, found within his county for the payment of the amount thereof with interest thereon and costs of executing the warrant, and to return such warrant to the comptroller and pay to the State treasurer the money collected by virtue thereof by a time to be specified therein, not less than sixty days from the date of the warrant. Such warrant shall be a lien upon and bind the real and personal property of the person, partnership, company, association or corporation against which it is issued, from the time an actual levy shall be made by virtue thereof. The sheriff to whom any such warrant shall be directed shall proceed upon the same in all re-

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spects, with like effect, and in the same manner as prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner.

§ 199. **Information of delinquents.**—It shall be the duty of any person having knowledge of the evasion of taxation under this article by any corporation, association, joint-stock company, partnership or person liable to taxation thereunder, for any omission on their part to make the reports required by this article, to make a written report thereof to the comptroller of the State, with such information as may be in his possession as may lead to the recovery of any taxes due the State therefrom. If, in his opinion, the interests of the State require it, the comptroller may employ such person to assist in the collection and preparation of evidence and in the prosecution and trial of actions for such taxes, and so much of the same, not exceeding ten per centum thereof, as may be collected from any such delinquent corporation, association, company, partnership or person, by reason of such report and such services, as shall have been agreed upon between such person and the comptroller or attorney-general as a compensation therefor, shall be paid to such person, and nothing shall be paid to such person for such report or services unless there shall be a recovery of taxes by reason thereof.

§ 200. **Action for recovery of taxes; forfeiture of charter of delinquent corporation.**—An action may be brought by the attorney-general, at the instance of the comptroller, in the name of the State, to recover the amount of any account audited and stated by the comptroller under the provisions of this article. If any such account shall remain unpaid at the expiration of one year after notice of the statement thereof has been sent as required by this article, and the comptroller is satisfied that the failure to pay the same is intentional, he shall so report to the attorney-general, who shall immediately bring an action, in the name of the people of the State, for the forfeiture of the franchise of any corporation, joint-stock company or association failing to make such payment, and if it is found that such failure was intentional, judgment shall be rendered in such action for the forfeiture of its franchise and

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for its dissolution, and thereafter such franchise shall be annulled.

§ 201. **Reports to be made by the secretary of state.**—The secretary of state shall transmit on the first day of each month, to the comptroller, a report of the stock corporations whose certificates of incorporation are filed, or of the foreign stock corporations to whom a certificate of authority has been issued to do business in this State, during the preceding month. Such report shall state the name of the corporation, its place of business, the amount of its capital stock, its purposes or objects, the names and places of residence of its directors, and, if a foreign corporation, its place of business within the State. The comptroller may prescribe the forms and furnish the blanks for such reports. The secretary of state shall make like reports to the comptroller whenever required by him relating to any such corporations whose certificates have been filed or to whom a certificate of authority has been issued prior to the time when this article takes effect, and during any period of time specified by the comptroller in his request for such report.

§ 202. **Exemptions from other State taxation.**—

For Tax Law, § 202. See § 131, ante.

§ 203. **Application of taxes.**—The taxes imposed by this article and the revenues thereof shall be applicable to the general fund of the treasury and to the payment of all claims and demands which are a lawful charge thereon.

ARTICLE X.

TAXABLE TRANSFERS.

This article was amended by chap. 368 of 1905. In effect June 1, 1905.

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| §220. Taxable transfers. | §234. Surrogate's assistants in New York, Kings and other counties. |
| §221. Exceptions and limitations. | §235. Proceedings by district attorneys. |
| §222. Accrual and payment of tax. | §236. Receipt from county treasurer or comptroller. |
| §223. Discount and interest. | §237. Fees of county treasurer. |
| §224. Lien of tax and collection by executors, administrators and trustees. | §238. Books and forms to be furnished by the state comptroller. |
| §225. Refund of tax erroneously paid. | §239. Reports of surrogate and county clerk. |
| §226. Taxes upon devises and bequests in lieu of commissions. | 240. Reports of county treasurer. |
| §227. Liability of certain corporations to tax. | §240a. Report of state comptroller; payment of taxes. |
| §228. Jurisdiction of the surrogate. | §241. Application of taxes. |
| §229. Appointment of appraisers, stenographers, et cetera. | §242. Definitions. |
| §230. Proceedings by appraiser. | §243. Exemptions in article one not applicable. |
| §231. Determination of surrogate. | |
| §232. Appeal and other proceedings. | |
| §233. Composition of transfer tax upon certain estates. | |

§ 220. **Taxable transfers.**—A tax shall be and is hereby imposed upon the transfer of any property, real or personal, of the value of five hundred dollars or over, or of any interest therein or income therefrom, in trust or otherwise, to persons or corporations not exempt by law from taxation on real or personal property, in the following cases:

1. When the transfer is by will or by the interstate laws of this State from any person dying seized or possessed of the property while a resident of the State.

2. When the transfer is by will or intestate law, of property within the State, and the decedent was a nonresident of the State at the time of his death.

3. When the transfer is of property made by a resident or by a nonresident when such nonresident's property is within this State, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

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4. When any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act.

5. Whenever any person or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this act, such appointment when made shall be deemed a transfer taxable under the provisions of this act in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

6. The tax imposed hereby shall be at the rate of five per centum upon the clear market value of such property, except as otherwise prescribed in the next section. (*Thus amended by L. 1905, chap. 368, in effect June 1, 1905.*)

§ 221. **Exceptions and limitations.**—When property real or personal or any beneficial interest therein, of the value of less than ten thousand dollars, passes by any such transfer to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of a son or the husband of a daughter, or any child or children adopted as such in conformity with the laws of this State, of the decedent, grantor, donor or vendor, or to any child to whom any such decedent, grantor, donor or vendor for not less than ten years prior to such transfer stood in the mutually acknowledged relation of a parent, provided, however, such relationship began at or before the child's fifteenth birthday and was continuous for said ten years thereafter, and provided also that the parents of such child shall be deceased when such relationship commenced, or to any lineal descendant of such dece-

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dent, grantor, donor or vendor born in lawful wedlock, such transfer of property shall not be taxable under this act; if real or personal property, or any beneficial interest therein, so transferred is of the value of ten thousand dollars or more, it shall be taxable under this act at the rate of one per centum upon the clear market value of such property. But any property devised or bequeathed to any person who is a bishop or to any religious, educational, charitable, missionary, benevolent, hospital or infirmity corporation including corporations organized exclusively for bible or tract purposes shall be exempted from and not subject to the provisions of this act. There shall also be exempted from and not subject to the provisions of this act personal property other than money or securities bequeathed to a corporation or association organized exclusively for the moral or mental improvement of men or women or for scientific, literary, library, patriotic, cemetery or historical purposes or for the enforcement of laws relating to children or animals or for two or more of such purposes and used exclusively for carrying out one or more of such purposes. But no such corporation or association shall be entitled to such exemption if any officer, member, or employee thereof shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof except reasonable compensation for services in effecting one or more of such purposes or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purpose be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees or if it be not in good faith organized or conducted exclusively for one or more of such purposes. (*Thus amended by L. 1905, ch. 368, in effect June 1, 1905.*)

§ 222. **Accrual and payment of tax.**—All taxes imposed by this article shall be due and payable at the time of the transfer, except as herein otherwise provided. Taxes upon the transfer of any estate, property or interest therein limited, conditioned, dependent or determinable upon the happening of any contingency or future event by reason of which the fair market value thereof cannot be ascertained at the time of the transfer as herein provided, shall accrue and become due and payable when the person or corporations beneficially entitled thereto shall come

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into actual possession or enjoyment thereof. Such tax shall be paid to the State comptroller in a county in which the office of appraiser is salaried, and in other counties, to the county treasurer, and said State comptroller or county treasurer shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of such payment as provided in section two hundred and thirty-six. (*Thus amended by L. 1905, chap. 368, in effect June 1, 1905.*)

§ 223. **Discount, and interest.**—If such tax is paid within six months from the accrual thereof, a discount of five per centum shall be allowed and deducted therefrom. If such tax is not paid within eighteen months from the accrual thereof, interest shall be charged and collected thereon at the rate of ten per centum per annum from the time the tax accrued; unless by reasons of claims made upon the estate, necessary litigation or other unavoidable cause of delay, such tax cannot be determined and paid as herein provided, in which case interest at the rate of six per centum per annum shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which ten per centum shall be charged.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

§ 224. **Lien of tax and collection by executors, administrators and trustees.**—Every such tax shall be and remain a lien upon the property transferred until paid and the person to whom the property is so transferred, and the executors, administrators and trustees of every estate so transferred shall be personally liable for such tax until its payment. Every executor, administrator or trustee, shall have full power to sell so much of the property of the decedent as will enable him to pay such tax in the same manner as he might be entitled by law to do for the payment of the debts of the testator or intestate. Any such executor, administrator or trustee having in charge or in trust any legacy or property for distribution subject to such tax shall deduct the tax therefrom and shall pay over the same to the State comptroller or county treasurer, as herein provided. If such legacy or property be not in money, he shall collect the tax thereupon the appraised value thereof from the person entitled thereto. He shall not

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deliver or be compelled to deliver any specific legacy or property subject to tax under this article to any person until he shall have collected the tax thereon. If any such legacy shall be charged upon or payable out of real property, the heir or devisee shall deduct such tax therefrom and pay it to the executor, administrator or trustee, and the tax shall remain a lien or charge on such real property until paid; and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that payment of the legacy might be enforced or by the district attorney under section two hundred and thirty-five of this chapter. If any such legacy shall be given in money to any such person for a limited period, the executor, administrator or trustee shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of an accounting by him, to make an apportionment, if the case require it, of the sum to be paid into his hands by such legatees, and for such further order relative thereto as the case may require.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

Executor personally liable for tax—payment of legacy without tax.

§ 225. **Refund of tax erroneously paid.**—If any debts shall be proven against the estate of a decedent after the payment of any legacy or distributive share thereof, from which any such tax has been deducted or upon which it has been paid by the person entitled to such legacy or distributive share, and such person is required by order of the surrogate having jurisdiction, on notice to the State comptroller, to refund the amount of such debts or any part thereof, an equitable proportion of the tax shall be repaid to him by the executor, administrator or trustee, if the tax has not been paid to the State comptroller or county treasurer; or if such tax has been paid to such State comptroller or county treasurer, such officer shall refund out of the funds in his hands or custody to the credit of such taxes such equitable proportion of the tax, and credit himself with the same in the account required to be rendered by him under this article. If after the payment of any tax in pursuance of an order fixing such tax, made by the surrogate having jurisdiction, such order

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be modified or reversed within two years from and after the date of entry of the order fixing the tax, on due notice to the State comptroller, the State comptroller shall, if such tax was paid in a county in which the office of appraiser is salaried, refund to the executor, administrator, trustee, person or persons by whom such tax has been paid, the amount of any moneys paid or deposited on account of such taxes in excess of the amount of the tax fixed by the order modified or reversed, out of the funds in his hands or custody to the credit of such taxes, and to credit himself with the same in the account required to be rendered by him under this act, or if paid in a county in which the office of appraiser is not salaried, he shall by warrant direct and allow the county treasurer of the county to refund such amount in the same manner; but no application for such refund shall be made after one year from such reversal or modification, and the State comptroller shall deduct from the fees allowed by this article to the county treasurer the amount theretofore allowed him upon such overpayment. Where it shall be proved to the satisfaction of the surrogate that deductions for debts were allowed upon the appraisal, since proved to have been erroneously allowed, it shall be lawful for such surrogate to enter an order assessing the tax upon the amount wrongfully or erroneously deducted.

Am'd by ch. 284 of 1897.

Am'd by ch. 282 of 1900.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

So long as the tax remains in the hands of the county treasurer the surrogate may order him to refund it. After it is paid to the comptroller he alone has authority to refund it.

Matter of Park, 8 Misc. Rep. 550.

Surrogate has power to modify decree where tax has been erroneously paid.

Matter of Sherer, 25 Misc. 138.

§ 226. **Taxes upon devises and bequests in lieu of commissions.**

—If a testator bequeaths or devises property to one or more executors or trustees in lieu of their commissions or allowances, or makes them his legatees to an amount exceeding the commissions or allowances prescribed by law for an executor or trustee, the excess in value of the property so bequeathed or devised, above the amount of commissions or allowances prescribed by law in similar cases shall be taxable under this article.

Am'd ch. 284 of 1897. In effect May 6, 1897.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

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§ 227. **Liability of certain corporations to tax.**— If a foreign executor, administrator or trustee shall assign or transfer any stock or obligations in this State standing in the name of a decedent, or in trust for a decedent, liable to any such tax, the tax shall be paid to the State comptroller or the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent who was a resident or nonresident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators, or legal representatives of said decedent and one or more persons or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon State comptroller at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax and interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the State comptroller consents thereto in writing. And it shall be lawful for the said State comptroller, personally or by representative, to examine such securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company,

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trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the State comptroller in any court of competent jurisdiction. (*Thus amended by L. 1905, chap. 368, in effect June 1, 1905.*)

§ 228. **Jurisdiction of the surrogate.**—The surrogate's court of every county of the State having jurisdiction to grant letters testamentary or of administration upon the estate of a decedent whose property is chargeable with any tax under this article, or to appoint a trustee of such estate or any part thereof, or to give ancillary letters thereon, shall have jurisdiction to hear and determine all questions arising under the provisions of this article, and to do any act in relation thereto authorized by law to be done by a surrogate in other matters or proceedings coming within his jurisdiction; and if two or more surrogate's courts shall be entitled to exercise any such jurisdiction, the surrogate first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other surrogate. Every petition for ancillary letters testamentary or ancillary letters of administration made in pursuance of the provisions of article seven, title three, chapter eighteen of the code of civil procedure shall set forth the name of the State comptroller as a person to be cited as therein prescribed, and a true and correct statement of all the decedent's property in this State and the value thereof; and upon the presentation thereof the surrogate shall issue a citation directed to the State comptroller; and upon the return of the citation the surrogate shall determine the amount of the tax which may be or become due under the provisions of this article and his decree awarding the letters may contain any provision for the payment of such tax or the giving of security therefor which might be made by such surrogate if the State comptroller were a creditor of the decedent.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 101 of 1902. In effect March 6, 1902.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

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§ 229. **Appointment of appraisers, stenographers, et cetera.**—The State comptroller shall appoint and may at pleasure remove not to exceed six persons in the county of New York; two persons in the county of Kings, and one person in the counties of Albany, Dutchess, Erie, Monroe, Oneida, Onondaga, Orange, Queens, Rensselaer, Richmond, Suffolk and Westchester, to act as appraisers therein. The appraisers so appointed shall receive an annual salary to be fixed by the State comptroller, together with their actual and necessary traveling expenses and witness fees, as hereinafter provided, payable monthly by the State comptroller out of any funds in his hands or custody on account of transfer tax. The salaries of each of the appraisers so appointed shall not exceed the following amounts: New York county, four thousand dollars; Kings county, three thousand dollars; Erie county, three thousand dollars; Westchester and Albany counties, seventy-five hundred dollars; in Queens, Monroe and Onondaga counties, one thousand five hundred dollars; in Dutchess, Oneida, Orange, Rensselaer and Suffolk counties, one thousand dollars, and in Richmond county, five hundred dollars. Each of the said appraisers shall file with the State comptroller his oath of office and his official bond in the penal sum of not less than one thousand dollars, in the discretion of the State comptroller, conditioned for the faithful performance of his duties as such appraiser, which bond shall be approved by the attorney-general and the State comptroller. The State comptroller shall retain out of any funds in his hands on account of said tax the following amounts: First. A sum sufficient to provide the appraisers of New York county with five stenographers, of Kings county with two stenographers, and of Erie county with one clerk, appointed by the State comptroller, whose salary shall not exceed fifteen hundred dollars a year each. Second. A sum to be used in defraying the expenses for office rent, stationery, postage, process serving, et cetera, necessarily incurred in the appraisal of estates, not exceeding seven thousand five hundred dollars a year in New York county, and one thousand five hundred dollars a year in Kings county. (*Thus amended by L. 1905, chap. 368, in effect June 1, 1905, and L. 1906, chap. 567, taking effect May 23, 1906.*)

§ 230. **Proceedings by appraiser.**—In each county in which the office of appraiser is not salaried the county treasurer shall

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act as appraiser. The surrogate, either upon his own motion, or upon the application of any interested person, including the State comptroller, shall by order direct the person or one of the persons appointed pursuant to section two hundred and twenty-nine of this article in counties in which the office of appraiser is salaried, and in other counties, the county treasurer, to fix the fair market value of property of persons whose estates shall be subject to the payment of any tax imposed by this article.

Every such appraiser shall forthwith give notice by mail to all persons known to have a claim or interest in the property to be appraised, including the State comptroller, and to such persons as the surrogate may by order direct, of the time and place when he will appraise such property. He shall at such time and place, appraise the same at its fair market value as herein prescribed; and for that purpose the said appraiser is authorized to issue subpoenas and to compel the attendance of witnesses before him and to take the evidence of such witnesses under oath concerning such property and the value thereof; and he shall make report thereof and of such value in writing, to the said surrogate, together with the depositions of the witnesses examined, and such other facts in relation thereto and to said matter as the surrogate may order or require. Every appraiser, except in the counties in which the office of appraiser is salaried, for which provision is hereinbefore made, shall be paid by the State comptroller and after the audit of said State comptroller, his actual and necessary traveling expenses and the fees paid such witnesses, which fees shall be the same as those now paid to witnesses subpoenaed to attend in courts of record, payment to be made out of funds in the hands of the county treasurer of the proper county on account of the tax imposed under the provisions of this article. Appraisers appointed under this article in proceedings pending at the time the amendment to this section takes effect shall complete the appraisals therein and file their reports as herein provided, and shall be entitled to the compensation authorized by law at the time of their appointment, to be paid by the State comptroller in counties in which the office of appraiser is salaried and in other counties by the county treasurer, out of any moneys in his hands on account of this tax.

The value of every future or limited estate, income, interest or annuity dependent upon any life or lives in being, shall be

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determined by the rule, method and standard of mortality and value employed by the superintendent of insurance in ascertaining the value of policies of life insurance and annuities for the determination of liabilities of life insurance companies, except that the rate of interest for making such computation shall be five per centum per annum.

In estimating the value of any estate or interest in property, to the beneficial enjoyment or possession whereof there are persons or corporations presently entitled thereto, no allowance shall be made on account of any contingent incumbrance thereon, nor on account of any contingency upon the happening of which the estate or property or some part thereof or interest therein might be abridged, defeated or diminished; provided, however, that in the event of such incumbrance taking effect as an actual burden upon the interest of the beneficiary, or in the event of the abridgment, defeat or diminution of said estate or property or interest therein as aforesaid, a return shall be made to the person properly entitled thereto of a proportionate amount of such tax on account of the incumbrance when taking effect, or so much as will reduce the same to the amount which would have been assessed on account of the actual duration or extent of the estate or interest enjoyed. Such return of tax shall be made in the manner provided by section two hundred and twenty-five of this article.

Where any property shall, after the passage of this act, be transferred subject to any charge, estate or interest, determinable by the death of any person, or at any period ascertainable only by reference to death, the increase accruing to any person or corporation upon the extinction or determination of such charge, estate or interest, shall be deemed a transfer of property taxable under the provisions of this act in the same manner as though the person or corporation beneficially entitled thereto had then acquired such increase from the person from whom the title to their respective estates or interests is derived.

When property is transferred in trust or otherwise, and the rights, interest or estates of the transferees are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed

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shall be due and payable forthwith by the executors or trustees out of the property transferred; provided, however, that on the happening of any contingency whereby the said property, or any part thereof, is transferred to a person or corporation exempt from taxation under the provisions of this article, or to any person taxable at a rate less than the rate imposed and paid, such person or corporation shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person or corporation should pay under the provisions of this article, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of overpayment shall be made in the manner provided by section two hundred and twenty-five of this article.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for purposes of taxation, upon which such estates in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

The report of the appraiser shall be made in duplicate, one of which duplicates shall be filed in the office of the surrogate and the other in the office of the State comptroller.

Am'd by ch. 284 of 1897.

Am'd by ch. 76 of 1899.

Am'd by ch. 658 of 1900.

§ 231. **Determination of surrogate.**— From such report of appraisal and other proof relating to any such estate before the surrogate, the surrogate shall forthwith, as of course, determine the cash value of all estates and the amount of tax to which the same are liable; or the surrogate may so determine the cash value of all such estates and the amount of tax to which the same are liable, without appointing an appraiser.

The superintendent of insurance shall, on the application of any surrogate, determine the value of any such future or con-

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tingent estates, income or interest therein limited, contingent, dependent or determinable upon the life or lives of persons in being, upon the facts contained in any such appraiser's report, and certify the same to the surrogate, and his certificate shall be conclusive evidence that the method of computation adopted therein is correct.

The surrogate shall immediately give notice, upon the determination by him as to the value of any estate which is taxable under this article, and of the tax to which it is liable, to all persons known to be interested therein, and shall immediately notify State comptroller.

§ 232. **Appeal and other proceedings.**—The State comptroller or any person dissatisfied with the appraisement or assessment and determination of tax may appeal therefrom to the surrogate within sixty days from the fixing, assessing and determination of tax by the surrogate as herein provided, upon filing in the office of the surrogate a written notice of appeal, which shall state the grounds upon which the appeal is taken.

Within two years after the entry of an order or decree of a surrogate determining the value of an estate and assessing the tax thereon, the State comptroller may, if he believes that such appraisal, assessment or determination has been fraudulently, collusively, or erroneously made, make application to a justice of the Supreme Court of the judicial district in which the former owner of such estate resided, for a reappraisal thereof. The justice to whom such application is made may thereupon appoint a competent person to reappraise such estate. Such appraiser shall possess the powers and be subject to the duties of an appraiser under section two hundred and thirty and shall receive compensation at the rate of five dollars per day for every day actually and necessarily employed in such appraisal. Such compensation shall be payable by the State comptroller or county treasurer out of any funds he may have on account of any tax imposed under the provisions of this article, upon the certificate of the justice appointing him. The report of such appraiser shall be filed with the justice by whom he was appointed, and thereafter the same proceedings shall be taken and had by and before such justice as are herein provided to be taken and had by and before the surrogate. The determination and assessment of such justice shall supersede the determination and assessment of the surro-

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gate, and shall be filed by such justice in the office of the State comptroller, and a certificate copy thereof transmitted to the surrogate's court of the proper county.

Am'd by ch. 284 of 1897.

Am'd by ch. 672 of 1899. In effect May 25, 1899.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

§ 233. **Composition of transfer tax upon certain estates.—**

The State comptroller, by and with the consent of the attorney-general expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under the provisions of chapter four hundred and eighty-three of the laws of eighteen hundred and eighty-five; chapter three hundred and ninety-nine of the laws of eighteen hundred and ninety-two, or chapter nine hundred and eight of the laws of eighteen hundred and ninety-six, and the several acts amendatory thereof and supplemental thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition, provided, however, that no such composition shall be conclusive in favor of said trustees as against the interests of such cestuis que trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian or committee. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the State comptroller, one copy in the office of the surrogate of the county in which the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto. (*Thus amended by the L. 1905, chap. 368, in effect June 1, 1905.*)

§ 234. **Surrogate's assistants in New York, Kings and other counties.—**The State comptroller may, upon the recommenda-

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tion of the surrogate, appoint, and may at pleasure remove assistants and clerks in the surrogate's offices of the following counties, at annual salaries to be fixed by him not to exceed the amounts hereinafter specified:

1. In New York county, a transfer tax assistant, four thousand dollars; a transfer tax clerk, two thousand four hundred dollars; an assistant clerk, eighteen hundred dollars; a recording clerk, thirteen hundred dollars; a stenographer, eight hundred dollars; and shall be entitled to expend not more than five hundred dollars a year in such office for expenses necessarily incurred in the assessment and collection of taxes under this article.

2. In Kings county, a transfer tax assistant, four thousand dollars; a transfer tax clerk, two thousand dollars; an assistant clerk, fifteen hundred dollars; and shall be entitled to expend not more than five hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

3. In Erie county, a transfer tax clerk, eighteen hundred dollars.

4. In Westchester county, a transfer tax assistant, two thousand five hundred dollars. (*Thus amended by L. 1906, chap. 699, taking effect June 2, 1906.*)

5. In Albany county, a transfer tax clerk, one thousand dollars.

6. In Queens county, a transfer tax clerk, one thousand dollars.

7. In Onondaga county, a transfer tax clerk, twelve hundred dollars.

8. In Monroe county, two transfer tax clerks, seven hundred and fifty dollars each; and shall be entitled to expend not more than two hundred dollars a year for expenses necessarily incurred in the assessment and collection of taxes under this article.

9. In Dutchess county, a transfer tax clerk, nine hundred dollars.

10. In Oneida county, not more than two transfer tax clerks, twelve hundred dollars in the aggregate.

11. In Suffolk county, a transfer tax clerk, one thousand dollars.

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12. In Ulster county, a transfer tax clerk, seven hundred and twenty dollars.

Such salaries and expenses shall be paid monthly by the State comptroller, upon proper vouchers, out of any funds in his hands on account of taxes collected under this article.

Am'd by ch. 389 of 1899. In effect July 1, 1899.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 283 of 1902. In effect March 29, 1902.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

§ 235. **Proceedings by district attorneys.**— If, after the expiration of eighteen months from the accrual of any tax under this article, such tax shall remain due and unpaid, after the refusal or neglect of the persons liable therefor to pay the same, the State comptroller shall notify the district attorney of the county, in writing, of such failure or neglect, and such district attorney shall apply to the surrogate's court for a citation, citing the persons liable to pay such tax to appear before the court on the day specified, not more than three months after the date of such citation, and show cause why the tax should not be paid. The surrogate, upon such application, and whenever it shall appear to him that any such tax accruing under this article has not been paid as required by law, shall issue such citation and the service of such citation, and the time, manner and proof thereof, and the hearing and determination thereon and the enforcement of the determination or order made by the surrogate shall conform to the provisions of the Code of Civil Procedure for the service of citations out of the surrogate's court, and the hearing and determination thereon and its enforcement so far as the same may be applicable. The surrogate or his clerk shall, upon the request of the district attorney or the State comptroller, furnish without fee, one or more transcripts of such decree, which shall be docketed and filed by the county clerk of any county of the State without fee, in the same manner and with the same effect as provided by law for filing and docketing transcripts of decrees of the surrogate's court. The costs awarded by any such decree after the collection and payment of the tax to the State comptroller or county treasurer may be retained by the district attorney for his own use. Such costs shall be fixed by the surrogate in his discretion, but shall not exceed in any case where there has not been a contest, the sum of one hundred dollars, or where there has been a contest the sum of two hun-

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dred and fifty dollars. Whenever the surrogate shall certify that there was probable cause for issuing a citation and taking the proceedings specified in this section, the State comptroller, after the same shall have been audited by him, shall pay all expenses incurred for the service of citations and other lawful disbursements not otherwise paid, from funds in his hands on account of such tax, or in a county in which the office of appraiser is not salaried, by a warrant upon the county treasurer of such county for the payment by him of the same from funds in his hands on account of such tax. In proceedings to which the State comptroller is cited as a party under sections two hundred and twenty-nine and two hundred and thirty of this article, he is authorized to designate and retain counsel to represent him and to pay the expenses thereby incurred out of the funds which may be in his hands on account of this tax in any case in a county where the office of appraiser is salaried, and in any other county the State comptroller shall by warrant direct the county treasurer to pay such expenses out of any funds which may be in his hands on account of this tax; provided, however, that in the collection of taxes upon estates of non-resident decedents the State comptroller shall not allow for legal services up to and including the entry of the order of the surrogate fixing the tax a sum exceeding ten per centum of the taxes and penalties collected. (*Thus amended by the L. 1905, chap. 368, in effect June 1, 1905.*)

§ 236. **Receipts from county treasurer or comptroller.**— One of the duplicate receipts issued for the payment of any tax under this article, as provided by section two hundred and twenty-two, shall be countersigned by the State treasurer if the same was issued by the State comptroller, and by the State comptroller if issued by any county treasurer. The officer so countersigning the same shall charge the officer receiving the tax with the amount thereof and affix the seal of his office to the same and return to the proper person; but no executor, administrator or trustee shall be entitled to a final accounting of an estate in settlement of which a tax is due under the provisions of this article unless he shall produce a receipt so sealed and countersigned, or a certified copy thereof. Any person shall, upon the payment of fifty cents to the officer issuing such receipt, be entitled to a

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duplicate thereof, to be signed, sealed and countersigned in the same manner as the original.

Any person shall, upon the payment of fifty cents, be entitled to a certificate of the State comptroller that the tax upon the transfer of any real estate of which any decedent died seized has been paid, such certificate to designate the real property upon which such tax is paid, the name of the person, and whether in full of tax. The certificate is filed in the county clerk's office where property is located, in a book labeled "Transfer Tax."

§ 237. **Fees of county treasurer.**—The treasurer of each county in which the office of appraiser is not salaried shall be allowed to retain on all taxes paid and accounted for by him each fiscal year under this article, five per centum on the first fifty thousand dollars, three per centum on the next fifty thousand dollars, and one per centum on all additional sums. Such fees shall be in addition to the salaries and fees now allowed by law to such officers.

Am'd by ch. 289 of 1898. In effect April 19, 1898.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

§ 238. **Books and forms to be furnished by the State comptroller.**—The State comptroller shall furnish to each surrogate a book, which shall be a public record, and in which he shall enter the name of every decedent upon whose estate an application to him has been made for the issue of letters of administration, or letters testamentary, or ancillary letters, the date and place of death of such decedent, the estimated value of his real and personal property, the names, places of residence and relationship to him of his heirs-at-law, the names and places of residence of the legatees and devisees in any will of any such decedent, the amount of each legacy and the estimated value of any real property devised therein, and to whom devised. These entries shall be made from the data contained in the papers filed on any such application, or in any proceeding relating to the estate of the decedent. The surrogate shall also enter in such book the amount of the personal property of any such decedent, as shown by the inventory thereof when made and filed in his office, and the returns made by any appraiser appointed by him under this article, and the value of annuities, life estates, terms of years, and other property of any such decedent or given by

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him in his will or otherwise as fixed by the surrogate, and the tax assessed thereon, and the amounts of any receipts for payment of any tax on the estate of such decedent under this article filed with him. The State comptroller shall also furnish to each surrogate forms for the reports to be made by such surrogate, which shall correspond with the entries to be made in such book. (*Thus amended by L. 1905, ch. 368, in effect June 1, 1905.*)

§ 239. **Reports of surrogate and county clerk.**—Each surrogate shall on January, April, July and October first of each year make a duplicate report, one to be filed with the county treasurer and one to the comptroller.

§ 240. **Reports of county treasurer.**—Each county treasurer in a county in which the office of appraiser is not salaried shall make a report under oath, to the State comptroller, on January, April, July and October first of each year, of all taxes received by him under this article, stating for what estate and by whom and when paid. The form of such report may be prescribed by the State comptroller. He shall, at the same time, pay the State treasurer all taxes received by him under this article and not previously paid into the State treasury, and for all such taxes collected by him and not paid into the State treasury within thirty days from the times herein required, he shall pay interest at the rate of ten per centum per annum.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

§ 240-a. **Report of State comptroller; payment of taxes.**—The State comptroller shall deposit all taxes collected by him under this article in a responsible bank, banking house or trust company in the city of Albany, which shall pay the highest rate of interest to the State for such deposit, to the credit of the State comptroller on account of the transfer tax. And every such bank, banking house or trust company, shall execute and file in his office an undertaking to the State, in the sum, and with such sureties as are required and approved by the comptroller for the safe keeping and prompt payment on legal demand therefor of all such moneys held by or on deposit in such bank, banking house or trust company, with interest thereon on daily balances at such rate as the comptroller may fix. Every such undertaking shall have indorsed thereon, or annexed thereto, the approval of

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the attorney general as to its form. The State comptroller shall on the first day of each month make a verified return to the State treasurer of all taxes received by him under this article, stating for what estate, and by whom and when paid; and shall credit himself with all expenditures made since his last previous return on account of such taxes, for salary, refunds, or other purposes lawfully chargeable thereto. He shall at the same time pay to the State treasurer the balance of such taxes remaining in his hands at the close of business on the last day of the previous month, as appears from such returns.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

§ 241. **Application of taxes.**—All taxes levied and collected under this article when paid into the treasury of the State shall be applicable to the expenses of the State government and to such other purposes as the legislature shall by law direct.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

§ 242. **Definitions.**—The words “estate” and “property,” as used in this article, shall be taken to mean the property or interest therein of the testator, intestate, grantor, bargainor or vendor, passing or transferred to those not herein specifically exempted from the provisions of this article, and not as the property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees or vendees, and shall include all property or interest therein, whether situated within or without this State. The word “transfer” as used in this article, shall be taken to include the passing of property or any interest therein in possession or enjoyment, present or future, by inheritance, descent, devise, bequest, grant, deed, bargain, sale or gift, in the manner herein prescribed. The words “county treasurer” and “district attorney,” as used in this article, shall be taken to mean the treasurer or the district attorney of the county of the surrogate having jurisdiction as provided in section two hundred and twenty-eight of this article.

Am'd by ch. 88 of 1898. In effect April 21, 1898.

Am'd by ch. 173 of 1901. In effect April 1, 1901.

Am'd by ch. 368 of 1905. In effect June 1, 1905.

§ 243. **Exemptions in article one not applicable.**—The exemptions enumerated in section four of the tax law, of which this article is a part, shall not be construed as being applicable

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in any manner to the provisions of article ten hereof. (*Thus amended by L. 1905, chap. 368, in effect June 1, 1905.*)

L. 1901, chap. 173, § 17. **Repeal.**—Chapter eight hundred and sixty-one of the laws of eighteen hundred and ninety-five; chapters nine hundred and fifty-two and nine hundred and fifty-three of the laws of eighteen hundred and ninety-six, chapter three hundred and seventy-five of the laws of eighteen hundred and ninety-seven; and chapters two hundred and sixty-nine, two hundred and seventy and four hundred and six of the laws of eighteen hundred and ninety-nine, and chapter three hundred and seventy-nine of the laws of nineteen hundred, are hereby repealed.

L. 1901, chap. 173, § 18. **Taking effect.**—This act shall take effect April first, nineteen hundred and one, except that salaried appraisers for the counties of Albany, Suffolk, Westchester, Dutchess, Monroe, Oneida, Onondaga, Orange and Rensselaer shall not be appointed before January first, nineteen hundred and two and until such time such counties shall be deemed counties in which the office of appraiser is not salaried under the provisions of this act. (*Thus amended by L. 1901, chap. 288, taking effect April 5, 1901.*)

ARTICLE XI

PROCEDURE

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| §250. Contents of petition. | §259. Supplementary proceedings to collect a tax. |
| §251. Allowance of writ of certiorari. | §259a. Dismissal of suits or proceedings. |
| §252. Return of writ. | §260. Power of county court when collector fails to pay over. |
| §253. Proceeding upon return. | §261. Payment of moneys collected. |
| §254. Costs. | §262. Collection of deficiency from collector's bondsmen. |
| §255. Appeals. | §263. Attorney-general to bring action for sequestration. |
| §256. Refund of tax paid upon illegal, erroneous or unequal assessment. | §264. Settlement of conflicting claims to surplus of tax sale. |
| §257. When county court may apportion tax. | |
| §258. Application to county court where taxpayer has removed from the county. | |

§ 250. **Contents of petition.**—Any person assessed upon any assessment-roll, claiming to be aggrieved by any assessment for property therein, may present to the Supreme Court a petition duly verified setting forth that the assessment is illegal, specifying the grounds of the alleged illegality, or if erroneous by reason of overvaluation, stating the extent of such overvaluation, or if unequal in that the assessment has been made at a higher proportionate valuation than the assessment of other property on the same roll by the same officers, specifying the instances in which such inequality exists, and the extent thereof, and stating that he is or will be injured thereby. Such petition must show that application has been made in due time to the proper officers to correct such assessment. Two or more persons assessed upon the same roll who are affected in the same manner by the alleged illegality, error or inequality, may unite in the same petition.

§ 251. **Allowance of writ of certiorari.**—Such petition must be presented to a justice of the Supreme Court or at a special term of the Supreme Court in the judicial district in which the assessment complained of was made, within fifteen days after the completion and filing of the assessment-roll and the first posting or publication of the notice thereof as required by this chapter. Upon the presentation of such petition, the justice or court

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may allow a writ of certiorari to the officers making the assessment, to review such assessment, and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days, and may be extended by the court or a justice thereof. Such writ shall be returnable to a special term of the Supreme Court of the judicial district in which the assessment complained of was made. The allowance of the writ shall not stay the proceedings of the assessors or other persons to whom it is directed or to whom the assessment is delivered, to be acted upon according to law.

§ 252. **Return to writ.**—The officers making a return to such writ shall not be required to return the original assessment-roll or other original papers acted upon by them, but it shall be sufficient to return certified or sworn copies of such roll or papers, or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the value of the property assessed on the roll and the grounds for the valuation made by the assessing officers and the return must be verified.

§ 253. **Proceedings upon return.**—If it shall appear upon the return to any such writ that the assessment complained of is illegal or erroneous or unequal for any of the reasons alleged in the petition, the court may order such assessment, if illegal, to be stricken from the roll, or if erroneous or unequal, it may order a re-assessment of the property of the petitioner, or the correction of his assessment upon the roll, in whole or in part, in such manner as shall be in accordance with law, or as shall make it conform to the valuations and assessments of other property upon the same roll and secure equality of assessment. If upon the hearing it shall appear to the court, that testimony is necessary for the proper disposition of the matter, it may take evidence or may appoint a referee to take such evidence as it may direct, and report the same to the court, with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. A new assessment or correction of an assessment made by order of the court shall have the same force and effect as if it had been

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so made by the proper officers within the time prescribed by law for making such assessment.

§ 254. **Costs.**—Costs shall not be allowed against the officers whose proceedings may be reviewed under any such writ unless it shall appear to the court, that they acted with gross negligence or in bad faith or with malice in making the assessment complained of. If the writ shall be quashed or the assessment confirmed, or if the assessment complained of shall be reduced by an amount less than half the reduction claimed before the assessing officers, costs and disbursements shall be awarded against the petitioner. If the assessment shall be reduced by an amount greater than half the reduction claimed before the assessing officers, costs and disbursements shall be awarded against the tax district represented by the officers whose proceedings may be reviewed. The costs and disbursements shall not exceed those taxable in an action upon the trial of an issue of fact in the Supreme Court, except that if evidence shall be taken there shall be included in the taxable costs and disbursements the expense of furnishing to the court or to the referee a copy of the stenographer's minutes of the evidence taken. (*Thus amended by L. 1905, chap. 281, in effect July 1, 1905.*)

L. 1905, ch. 281, § 2. This amendment shall not apply to the proceedings under any writ granted prior to the first day of July, nineteen hundred and five.

§ 255. **Appeals.**—An appeal may be taken by either party from an order, judgment or determination under this article as from an order, and it shall be heard and determined in like manner as appeals in the Supreme Court from orders. All issues and appeals in any proceeding under this article shall have preference over all other civil actions and proceedings in all courts.

§ 256. **Refund of tax paid upon illegal, erroneous or unequal assessment.**—If in a final order in any such proceeding it shall be ordered or adjudged that the assessment complained of was illegal, erroneous or unequal, and such order shall not be made in time to enable the assessors or other officers to make a new or corrected assessment for the use of the board of supervisors, then

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at the first annual session of the board of supervisors, after such correction there shall be audited and allowed to the petitioner and included in the tax levy of such town, village or city, made next after the entry of such order, and paid to the petitioner, the amount paid by him, in excess of what the tax should have been if the assessment had been made as determined by such order of the court, together with the interest thereon from the date of payment. In case the amount deducted from such assessment by such order exceeds ten thousand dollars, so much thereof as shall be refunded by reason of such corrected assessment, other than the proportion or percentage thereof collected for such town, village or city purposes, shall be levied upon the county at large and paid to the petitioner without further audit. The board of supervisors shall audit and levy upon such town, village or city, the proportion or percentage of such excess of tax collected for such town, village or city purposes, which shall be collected and paid to the petitioner without other or further audit.

§ 257. **When county court may apportion tax.**—When the premises of one person shall have been wrongfully assessed and taxed in with the premises of another, the person aggrieved thereby may, upon application to the county court of the county in which the property is situated, on petition duly verified, and on eight days' notice to the assessors of the town in which the premises are situated, and to the party whose premises are included in such wrongful assessment, have such assessment and tax apportioned by such county court. The county court shall take such evidence as may be necessary to determine the facts, and shall fix and specify the amount of the assessment and tax properly chargeable to the petitioner's property, and to the other party chargeable therewith. The collector of the town, upon receiving a copy of the order of the county court, shall forthwith change the assessment-roll and tax to conform to such order, and shall receive the amount apportioned upon the premises of the petitioner in full for the tax upon such property.

§ 258. **Application to county court where taxpayer has removed from the county.**—If it shall satisfactorily appear by affidavit to the county court of any county that a tax legally levied therein, except upon real property of nonresidents, cannot be collected because of the removal of the person taxed to any other

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county of the State, such court shall, upon application of the collector of any tax district or of the county treasurer of the county, grant an order, directed to the sheriff of the county where such person may be, to collect the same out of his personal property, with interest at the rate of eight per centum per annum from the date of said order. Such order shall be filed in the office of the clerk of the county in which it is granted, and a certified copy thereof delivered to the constable or sheriff of the county where the person liable for the tax may be, and such constable or sheriff, on receiving the same, shall execute it, and make a like return, and be entitled to the same fees and subject to the same liabilities and penalties for neglect as upon execution from any court of record. The sheriff receiving such moneys shall pay the same to the county treasurer of the county where it was levied, to the credit of the town in which it was assessed. This provision shall also apply to taxes levied upon rents reserved as upon personal property where such taxes remain unpaid.

§ 259. **Supplementary proceedings to collect tax.**—If a tax exceeding ten dollars in amount levied against a person or corporation is returned by the proper collector uncollected for want of personal property out of which to collect the same, the supervisor of the town or ward, or the county treasurer or the president of the village, if it is a village tax, may, within one year thereafter, apply to the court for the institution of proceedings supplementary to execution, as upon a judgment docketed in such county, for the purpose of collecting such tax and fees, with interest thereon from the fifteenth day of February after the levy thereof. Such proceedings may be taken against a corporation, and the same proceedings may thereupon be had in all respects for the collection of such tax as for the collection of a judgment by proceedings supplementary to execution thereon against a natural person, and the same costs and disbursements may be allowed against the person or corporation examined as in such supplementary proceedings, but none shall be allowed in his or its favor. The tax, if collected in such proceeding, shall be paid to the county treasurer or to the supervisor of the town, and if a village tax, to the treasurer of the village. The costs and disbursements collected shall belong to the party instituting the proceedings, and shall be applied to the payment of the expense of

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such proceeding. The president of a village and a county treasurer shall have no compensation for any such proceeding. A supervisor shall have no other compensation except his per diem pay for time necessarily spent in the proceeding.

§ 259-a. **Dismissal of suits or proceedings.**— Where the person or corporation against whom a proceeding or suit is brought to collect a personal tax in arrears in any town or ward, village, county or city of this State is unable for want of property to pay the tax in whole or in part, or where for other reasons, upon the facts, it appears to the court just that said tax should not be paid, the court may dismiss such suit or proceeding on the payment of such part of the tax as may be just or on payment of costs.

Added by ch. 348 of 1905.

§ 260. **Power of county court when collector fails to pay over.**—

For Tax Law, § 260. See § 94, ante.

§ 261. **Payment of moneys collected.**—

For Tax Law, § 261. See § 95, ante.

§ 262. **Collection of deficiency from collector's bondsmen.**—

For Tax Law, § 262. See § 96, ante.

§ 263. **Attorney-general to bring action for sequestration.**— It shall be the duty of the attorney-general, on being informed by the comptroller or by the county treasurer of any county that any incorporated company refuses or neglects to pay the taxes imposed upon it, pursuant to articles one and two of this chapter, to bring an action in the Supreme Court for the sequestration of the property of such corporation and the court may so sequester the property of such corporation for the purpose of satisfying taxes in arrears, with the costs of prosecution, and may, also, in its discretion, enjoin such corporation and further proceedings under its charter until such tax and the costs incurred in the action shall be paid. The attorney-general may recover such tax with costs from such delinquent corporation by action in any court of record.

§ 264. **Settlement of conflicting claims to surplus of tax sale.**—

For Tax Law, § 264. See § 97, ante.

ARTICLE XII.

LAWS REPEALED ; WHEN TO TAKE EFFECT.

§280. Laws repealed.

§281. When to take effect.

§ 280. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is repealed.

§ 281. **When to take effect.**— This chapter shall take effect June fifteenth, eighteen hundred and ninety-six.

ARTICLE XIII.

LIMITATION OF TIME.

§282. Limitation of time.

§ 282. **Limitation of time.**—The provisions of the Code of Civil Procedure, relative to the limitation of time of enforcing a civil remedy, shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any tax or penalty prescribed by articles nine or ten of said chapter, and this act shall be construed as having been in effect as of date of the original enactment of the corporation and inheritance tax law, provided, however, that as to real estate in the hands of bona fide purchasers, the transfer tax shall be presumed to be paid and cease to be a lien as against such purchasers after the expiration of six years from the date of accrual. This act shall not affect any action or proceeding now pending.

Am'd by ch. 737 of 1899.

ARTICLE XIV.

(This article added by L. 1905, chap. 729 and amended by L. 1906, chap. 532, taking effect July 1, 1906.)

MORTGAGES OF REAL PROPERTY WITHIN THIS STATE.

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| §290. Definitions. | §298. Payment over and distribution of tax. |
| §291. Exemptions from local taxation. | §299. Expenses of officers. |
| §292. Exemptions. | §300. Supervisory power of state board of tax commissioners and state comptroller. |
| §293. Recording tax. | §301. Tax on prior advance mortgages. |
| §294. Payment of taxes. | |
| §295. Effect of nonpayment of tax. | |
| §296. Trust mortgages. | |
| §297. Apportionment by state board of tax commissioners. | |

§ 290. Definitions.—

For Tax Law, § 290. See § 37, ante.

§ 291. Exemption from local taxation.—

For Tax Law, § 291. See § 37, ante.

§ 292. Exemption from local taxation.—

For Tax Law, § 292. See § 37, ante.

§ 293. Recording tax.—

For Tax Law, § 293. See § 37, ante.

§ 294. Payment of taxes.—

For Tax Law, § 294. See § 37, ante.

§ 295. Effect of nonpayment of taxes.—

For Tax Law, § 295. See § 37, ante.

§ 296. Payment of tax.—

For Tax Law, § 296. See § 37, ante.

§ 297. Apportionment by State board of tax commissioners.

—When the real property covered by a mortgage is assessed in more than one county it shall be the duty of the State board of tax commissioners to ascertain the assessed value of the property in each county and to apportion the amount upon which the tax shall be paid to the recording officer in each of the said counties

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upon the basis of the relative assessments. Where the mortgage is a first lien upon real property situate in one tax district and a subsequent lien upon real property situate in another tax district it shall be their duty to apportion the amount of the tax properly to be credited to said tax districts by ascertaining the valuation of each parcel as appears from the last preceding assessment-roll of the tax district in which such parcel is located after deducting therefrom the taxable amount of any prior lien. When the real property covered by a mortgage is located partly within the State and partly without the State it shall be the duty of the State board of tax commissioners to determine what proportion shall be taxable under this article by determining the relative value of the mortgaged property within this State as compared to the total value of the entire mortgaged property, taking into consideration in so doing the amount of all prior incumbrances upon such property or any portion thereof. If a mortgage covering property located partly within the State and partly without the State, is presented for record before such determination has been made, then there may be presented to the recording officer with such mortgage, a statement in duplicate verified by the mortgagor or an officer or duly authorized agent or attorney of the mortgagor, specifying the value of the property covered by the mortgage within the State and the property covered by the mortgage without the State, stated separately. One of such statements shall be filed by the recording officer and the other shall be transmitted by him to the State comptroller. The tax payable under this article before the determination by the State board of tax commissioners, shall be computed upon such proportion of the principal indebtedness secured by the mortgage as the value of the mortgaged property within the State shall bear to the total value of the entire mortgaged property as set forth in such statement. The State comptroller shall present the statement transmitted to him or a certified copy thereof to the State board of tax commissioners, who shall hereupon on not less than ten days' notice, served personally or by mail upon the person making such statement, the mortgagee and upon the comptroller, proceed to determine what proportion of the principal indebtedness secured by the mortgage shall be used as the measure of taxation within the State under the provisions of this article. They may also determine at the same time the proportion of the tax which shall be paid by the

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recording officer who has received the same, to the several county treasurers of the respective counties in the State, in which parts of the mortgaged property are situated, and also the proportion of the tax to be distributed under the provisions of this article to be credited to each town or city within a county. The State board of tax commissioners shall report their determination to the State comptroller, who shall file a certified copy of such determination with the recording officer of each county in which any part of the mortgaged property is situated. The comptroller shall serve a copy of such certificate personally or by mail upon the person making such statement and upon the mortgagee, together with a notice requiring the payment to the proper recording officer within ten days thereafter, of the amount of the tax on such mortgage, if any, which under the determination of said board remains unpaid. Such additional tax shall become due and be deemed unpaid upon the expiration of such period of ten days. The State board of tax commissioners shall adopt rules to govern their procedure and the manner of taking evidence in these matters and may require certified statements to be furnished either by boards of assessors or recording officers of the respective counties in relation thereto, and immediately upon making their determination they shall file a certificate thereof with the recording officer of each county within which a portion of the mortgaged property is situated; and a minute of such determination shall be entered in the margin of the record of the said mortgage, and whenever the tax upon a mortgage secured by real property assessed in two or more counties shall have been paid, as provided by this article it shall also be the duty of the State board of tax commissioners to equitably apportion between the respective counties the amount upon which such tax is to be computed and to file the certificate of their determination with the recording officer, and thereupon said recording officer shall pay over to the several county treasurers of the respective counties or to the chamberlain of the city of New York the sums fixed by said certificate of determination.

§ 298. Computation of annual tax.—

For Tax Law, § 298. See § 37, ante.

§ 299. Expenses of officers.—Recording officers and county treasurers and the chamberlain of the city of New York, shall

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severally be entitled to receive all their necessary expenses for the purposes of this act, including printing, hire of clerks and assistants, being first approved and allowed by the State board of tax commissioners, which shall be retained by them out of the moneys coming into their hands.

§ 300. **Supervisory power of State board of tax commissioners and State comptroller.**—The State board of tax commissioners shall have general supervisory power over all recording officers in respect of the duties imposed by this article and they may make such rules and regulations for the government of recording officers in respect to the matters provided for in this article as they may deem proper, provided that such rules and regulations shall not be inconsistent with this or any other statute. The State comptroller shall have general supervisory power over all county treasurers and the chamberlain of the city of New York in respect to the duties imposed upon them by this article, and may make such rules and regulations, not inconsistent with this or any other statute, for the government of said county treasurers and chamberlain as he deems necessary and appropriate to secure a due accounting for all taxes and moneys collected or received pursuant to any provision of this article. All recording officers and county treasurers, and the chamberlain of the city of New York, shall furnish such bond, conditioned for the faithful and diligent discharge of the duties required of them respectively by this article, to the people of the State, within such time, with such sureties and in such penal amount, not exceeding twenty-five thousand dollars, as the State comptroller may prescribe.

§ 301. **Tax on prior advance mortgages.**—

For Tax Law, § 301. See § 37, ante.

ARTICLE XV.

(New article added by L. 1905, chap. 241, taking effect April 19, 1905.)

TAX ON TRANSFERS OF STOCK.

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| §315. Amount of tax. | §320. Illegal use of stamps; penalty. |
| §316. Stamps how prepared and sold. | §321. Power of state comptroller. |
| §317. Penalty for failure to pay tax. | §322. Civil penalty; how recovered. |
| §318. Cancelling stamps; penalty for failure. | §323. Effect of failure to pay tax. |
| §319. Contracts for dies; expenses how paid. | §324. Application of taxes. |

§ 315. **Amount of tax.**—There is hereby imposed and there shall immediately accrue and be collected a tax as herein provided, on all sales, or agreements to sell, or memoranda of sales or deliveries or transfers of shares or certificates of stock in any domestic or foreign association, company or corporation, made after the first day of June, nineteen hundred and five, whether made upon or shown by the books of the association, company or corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, or to secure the future payment of money or the future transfer of any stock on each share of one hundred dollars of face value or fraction thereof, two cents. It is not intended by this act to impose a tax upon an agreement evidencing the deposit of stock certificates as collateral security for money loaned thereon which stock certificates are not actually sold, nor upon such stock certificates so deposited. The payment of such tax shall be denoted by an adhesive stamp or stamps affixed as follows: In a case where the evidence of transfer is shown only by the books of the company the stamp shall be placed upon such books; and where the change of ownership is by transfer of a certificate the stamp shall be placed upon the certificate; and in cases of an agreement to sell or where the transfer is by delivery of the certificate assigned in blank there shall be made and delivered by the seller to the buyer a bill or memorandum of such sale to which the stamp provided for by this article shall be affixed; and every bill or memorandum of sale or agreement to sell before

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mentioned shall show the date thereof, the name of the seller, the amount of the sale, and the matter or thing to which it refers, and no further tax is hereby imposed upon the delivery of the certificate of stock, or upon the actual issue of a new certificate when the original certificate of stock is accompanied by the duly stamped memorandum of sale. The comptroller may, upon satisfactory proof that stamps have been erroneously affixed and canceled in payment of the tax upon a transfer and to the loss of an innocent person, refund the amount thereof from appropriations made for necessary expenses under this act, provided the tax justly due is paid upon such transfer. (*Thus amended by L. 1906, chap. 414, taking effect May 11, 1906.*)

§ 316. **Stamps how prepared and sold.**—Adhesive stamps for the purpose of paying the State tax provided for by this article shall be prepared by the State comptroller, in such form, and of such denominations and in such quantities as he may from time to time prescribe, and shall be sold by him to the person or persons desiring to purchase the same; he shall make provision for the sale of such stamps in such places and at such times as in his judgment he may deem necessary.

§ 317. **Penalty for failure to pay tax.**—Any person or persons who shall make any sale or transfer without paying the tax by this article imposed or who shall in pursuance of any sale or agreement deliver any stock, or evidence of the sale of or agreement to sell any stock or bill or memorandum thereof, without having the stamps provided for in this article affixed thereto, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned not more than six months, or by both such fine and imprisonment at the discretion of the court. (*Thus amended by L. 1906, chap. 414, taking effect May 11, 1906.*)

§ 318. **Canceling stamps; penalty for failure.**—In every case where an adhesive stamp shall be used to denote the payment of the State tax provided by this article the person using or affixing the same shall write or stamp thereupon the initials of his name and the date upon which the same shall be attached or used, and shall cut or perforate the stamp in a substantial manner, so that

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such stamp cannot be again used; and if any person fraudulently makes use of an adhesive stamp to denote the State tax imposed by this article, without so effectually canceling and obliterating such stamp, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than two hundred nor more than five hundred dollars or be imprisoned for not less than six months, or both, at the discretion of the court.

§ 319. **Contracts for dies; expenses how paid.**—The State comptroller is hereby directed to make, enter into and execute for and in behalf of the State such contract or contracts for dies, plates and printing necessary for the manufacture of the stamps provided for by this article, and provide such stationery and clerk hire, together with such books and blanks as in his discretion may be necessary for putting into operation the provisions of this article; he shall be the custodian of all stamps, dies, plates or other material or thing furnished by him and used in the manufacture of such State tax stamps, and all expenses incurred by him and under his direction in carrying out the provisions of this article shall be paid to him by the State treasurer from any moneys appropriated for such purpose.

§ 320. **Illegal use of stamps. penalty.**—Any person who shall wilfully remove or cause to be removed, alter or cause to be altered the canceling or defacing marks of any adhesive stamp provided for by this article with intent to use the same, or to cause the use of the same after it shall have been once used, or shall knowingly or wilfully sell or buy any washed or restored stamp, or offer the same for sale, or give or expose the same to any person for use, or knowingly use the same or prepare the same with intent or the further use thereof, or shall wilfully use any counterfeit stamp or any forged stamp with intent to defraud the State of New York, shall be guilty of a misdemeanor, and on conviction thereof shall be liable to a fine of not less than five hundred nor more than one thousand dollars, or be imprisoned for not more than six months, or by both such fine and imprisonment, at the discretion of the court.

§ 321. **Power of State comptroller.**—Every person, firm, company, association or corporation, making a sale, agreement to sell, delivery or transfer, of shares or certificates of stock shall keep

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a true record of such transaction and the date thereof. The State comptroller may at any time after transfers of stock which by the provisions of this article are subject to a State stamp tax, inquire into and ascertain whether the tax imposed by the provisions of this article has been paid. For the purpose of ascertaining such fact the comptroller shall have the right and it shall be his duty to examine the books and papers of any person, firm, company, association or corporation and memoranda of transfers shall remain accessible for such inspection for three months from their respective dates. If from such examination the comptroller ascertains that the tax provided for in this article has not been paid he shall bring an action in any court of competent jurisdiction for the recovery of such tax and for any penalty incurred by any person under the provisions of this article. (*Thus amended by L. 1906, chap. 414, taking effect May 11, 1906.*)

§ 322. **Civil penalty; how recovered.**—Any person who shall violate the provisions of this article shall in addition to the penalties herein provided forfeit to the people of the State a civil penalty of five hundred dollars for each violation. The State comptroller shall bring an action in his name as such comptroller in any court of competent jurisdiction for the recovery of any civil penalty and all moneys collected by him shall be paid into the State treasury.

§ 323. **Effect of failure to pay tax.**—No transfer of stock made after June first, nineteen hundred and five, on which a tax is imposed by this article, and which tax is not paid, at the time of such transfer shall be made the basis of any action or legal proceedings, nor shall proof thereof be offered or received in evidence in any court in this State.

§ 324. **Application of taxes.**—The taxes imposed under this article and the revenues thereof shall be paid by the State comptroller into the State treasury and be applicable to the general fund, and to the payment of all claims and demands which are a lawful charge thereon.

SCHEDULE OF LAWS REPEALED.

Revised Statutes.		Sections.
Part I, ch. 13.....		All, except § 7 of tit. VI.
Part III, ch. 8, tit. XVIII.....		§§ 28, 29, 30.
Laws of	Chapter.	
1835.....	11.....	All.
1836.....	461.....	All.
1841.....	341.....	All.
1842.....	154.....	All.
1842.....	318.....	All.
1845.....	180.....	29, 30, 31, 32.
1846.....	327.....	All.
1847.....	455.....	16.
1847.....	482.....	All.
1849.....	180.....	All.
1851.....	176.....	All.
1851.....	371.....	All.
1852.....	46.....	All.
1852.....	282.....	All.
1853.....	69.....	All.
1853.....	406.....	All.
1853.....	469.....	All.
1854.....	393.....	All.
1855.....	37.....	All.
1855.....	83.....	All.
1855.....	327.....	All.
1855.....	427.....	All.
1856.....	183.....	All.
1857.....	7.....	All.
1857.....	456.....	All.
1857.....	536.....	All.
1857.....	585.....	All.
1858.....	110.....	All.
1858.....	357.....	All.
1859.....	312.....	All.
1860.....	209.....	All.
1862.....	194.....	All.
1862.....	285.....	1.
1865.....	453.....	All.
1866.....	136.....	All.
1866.....	528.....	All.
1866.....	820.....	All.
1867.....	361.....	All.
1867.....	694.....	All.
1868.....	575.....	All.
1869.....	859.....	All.
1870.....	280.....	All.
1870.....	325.....	All.

Schedule of laws repealed.

Laws of	Chapter.	
1870.....	492.....	Extract from § 2, authorizing comp- troller to designate papers in which no- tice of sale of lands for nonpayment of taxes shall be pub- lished.
1870.....	506.....	2. 3, 4, 5.
1871.....	110.....	All.
1873.....	327.....	All.
1873.....	809.....	All.
1874.....	351.....	All.
1875.....	331.....	All.
1875.....	466.....	All.
1875.....	474.....	All.
1876.....	49.....	All.
1876.....	96.....	All.
1876.....	101.....	All.
1878.....	152.....	All.
1879.....	492.....	All.
1880.....	80.....	All.
1880.....	91.....	All.
1880.....	269.....	All.
1880.....	327.....	All.
1880.....	448.....	All.
1880.....	542.....	All.
1880.....	552.....	All.
1881.....	8.....	All.
1881.....	166.....	All.
1881.....	293.....	All.
1881.....	361.....	All.
1881.....	402.....	5.
1881.....	433.....	All.
1881.....	640.....	All.
1882.....	151.....	All.
1882.....	409.....	312-327, inclusive.
1883.....	342.....	All.
1883.....	392.....	All.
1883.....	397.....	All.
1883.....	464.....	All.
1884.....	57.....	All.
1884.....	153.....	All.
1884.....	280.....	All.
1884.....	353.....	All.
1884.....	414.....	All.
1884.....	435.....	All.
1884.....	537.....	All.
1885.....	10.....	All.
1885.....	32.....	All.
1885.....	201.....	All.
1885.....	215.....	All.
1885.....	340.....	12.
1885.....	359.....	All.
1885.....	411.....	All.
1885.....	453.....	All.
1885.....	501.....	All.
1886.....	59.....	All.
1886.....	102.....	All.

THE TAX LAW.

CH. IX.

Schedule of laws repealed.

Laws of	Chapter.	
1886.....	143.....	All.
1886.....	266.....	All.
1886.....	315.....	All.
1886.....	659.....	1, 2, 3, 5, 6.
1886.....	679.....	All.
1887.....	284.....	All.
1887.....	342.....	All.
1888.....	110.....	All.
1889.....	191.....	All.
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1889.....	463.....	All.
1889.....	469.....	All.
1889.....	563.....	All.
1890.....	145.....	All.
1890.....	174.....	All.
1890.....	206.....	All.
1890.....	497.....	All.
1890.....	522.....	All.
1890.....	553.....	All.
1890.....	556.....	All.
1891.....	163.....	All.
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1892.....	196.....	All.
1892.....	202.....	1.
1892.....	266.....	All.
1892.....	347.....	All.
1892.....	399.....	All.
1892.....	463.....	All.
1892.....	477.....	All.
1892.....	529.....	All.
1892.....	565.....	All.
1892.....	661.....	All.
1892.....	668.....	All.
1892.....	713.....	All.
1892.....	714.....	All.
1893.....	199.....	All.
1893.....	498.....	All.
1893.....	525.....	All.
1893.....	704.....	All.
1893.....	711.....	All.
1894.....	196.....	All.
1894.....	312.....	All.
1894.....	562.....	All.
1894.....	713.....	All.
1895.....	378.....	All.
1895.....	418.....	All.
1895.....	425.....	All.
1895.....	515.....	All.
1895.....	556.....	All.
1895.....	558.....	All.
1895.....	608.....	All.
1895.....	895.....	All.
1895.....	861.....	All.
1896.....	952.....	All.
1896.....	953.....	All.
1897.....	375.....	All.

Schedule of laws repealed.

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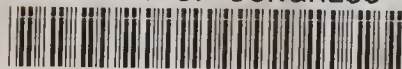
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